

EXHIBIT A

Hearing Date and Time: June 28, 2023 at 10:00 a.m. (ET)
Objection Deadline: June 21, 2021, at 5:00 p.m. (ET)

DUANE MORRIS LLP

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

ERBO PROPERTIES, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10210 (LGB)

Jointly Administered

**DECLARATION OF MORRIS S. BAUER IN SUPPORT OF 541 W 21
SME LLC'S OBJECTION TO THE DEBTORS' DISCLOSURE
STATEMENT TO ACCOMPANY THEIR JOINT CONSOLIDATED
PLAN OF REORGANIZATION DATED MAY 15, 2023**

I, Morris S. Bauer, being of full age, declare, pursuant to section 1746 of title 28 of the United States Code, that:

1. I am a partner with the law firm of Duane Morris LLP, counsel for the movant, 541 SME W 21 LLC ("SME"), a creditor in the above-captioned bankruptcy cases. I am fully familiar with the facts set forth herein.

¹ The Debtors are ERBO Properties LLC (EIN x9179), Case No.: 23-10210, with a mailing address at 551 Bedford Avenue, Brooklyn, NY 11211; KOVA 521, LLC (EIN x9972), Case No.: 23-10211, with a mailing address at 551 Bedford Avenue, Brooklyn, NY 11211; and Gold Mezz LLC (EIN x4741), Case No.: 23-10212, with a mailing address at 551 Bedford Avenue, Brooklyn, NY 11211.

2. I submit this declaration in support of *541 W 21 SME LLC's Objection to the Debtors' Disclosure Statement to Accompany Their Joint Consolidated Plan of Reorganization Dated May 15, 2023* (the "Objection").²

3. Attached hereto as **Exhibit 1** is a true and correct copy of the Transcript of the Hearing Before the Hon. Lisa G. Beckerman on June 6, 2023, at 10:00 a.m.

Executed this 21st day of June, 2023

/s/ Morris S. Bauer
Morris S. Bauer, Esq.

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Objection.

EXHIBIT 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10210-lgb

4 - - - - - x

5 In the Matter of:

6
7 ERBO PROPERTIES LLC,

8
9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14
15 June 6, 2023

16 10:00 AM

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21 B E F O R E :

22 HON LISA G. BECKERMAN

23 U.S. BANKRUPTCY JUDGE

24
25 ECRO: JONATHAN

1 HEARING re Motion for Relief from Stay filed by Morris S.

2 Bauer on behalf of 541 W 21 SME LLC

3
4 HEARING re EVIDENTIARY HEARING- Motion to Reject Notice of
5 Motion and Debtor Erbo Properties LLCs Motion for Entry of
6 an Order (i) Rejecting: (A) Development Management Agreement
7 with Higher Ground 541 LLC, and (B) Construction Management
8 Agreement with Cauldwell Wingate Company, LLC; (ii) Fixing a
9 Bar Date for Claims of Counterparties to the Rejected
10 Contracts; and (iii) Granting Related Relief

11
12 HEARING re Motion to Authorize Notice of Motion and Debtors
13 Motion to Enter Into Agreements with Irving Oak Management
14 and Mabe Group Inc. to Complete Construction of the Debtors
15 Project Located at 541 West 21st Street, New York, NY
16 (related document(s)13)

17
18 HEARING re Motion to Reject Notice of Motion and Debtor Erbo
19 Properties LLCs Motion for Entry of an Order (i) Rejecting:
20 (A) Development Management Agreement with Higher Ground 541
21 LLC, and (B) Construction Management Agreement with
22 Cauldwell Wingate Company, LLC; (ii) Fixing a Bar Date for
23 Claims of Counterparties to the Rejected Contracts; and
24 (iii) Granting Related Relief

1 HEARING re Objection Debtors Objection to 541 W 21 SME LLCs
2 Supplement to Motion for an Order Terminating the Automatic
3 Stay and Related Relief (related document(s) 89)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 TARTER KRINSKY & DROGAN LLP

4 Attorneys for the Debtors

5 1350 Broadway, 11th Floor

6 New York, NY 10018

7

8 BY: SCOTT MARKOWITZ

9

10 HERRICK FEINSTEIN LLP

11 Attorneys for G4 18190, LLC

12 2 Park Avenue

13 New York, NY 11249

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15 BY: STEPHEN SELBST

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20 1037 Raymond Boulevard, Suite 1800

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22

23 BY: MORRIS BAUER

24

25

1 INGRAM YUZEK GAINEN CARROLL BERTOLOTTI LLP
2 Attorneys for Cauldwell Wingate
3 150 East 42nd Street, 19th Floor
4 New York, NY 10017
5

6 BY: JENNIFER B. ZOURIGUI
7

8 UNITED STATES DEPARTMENT OF JUSTICE
9 Attorneys for the U.S. Trustee
10 Alexander Hamilton Custom House
11 One Bowling Green, Room 534
12 New York, NY 10004
13

14 BY: TARA TIAN TIAN
15

16 ALSO PRESENT:

17 KEVIN NASH

18 ELIEZER FRIED

19 CHRISTOPHER HALM

20 ERIC KHAYUT

21 HERSHEL KLEIN

22 MAX BELINSKY

23 RAYMOND CECORA

24 PETER CECORA

25 UDAY GORREPATI

1 P R O C E E D I N G S

2 THE COURT: Good morning, this is Judge Beckerman.
3 The Court is now in session. I'm going to go ahead and call
4 the case, but when I do, I'll ask the attorneys to please
5 put their appearances on the record, and then I will also
6 ask the attorneys that when they're speaking, they identify
7 themselves again for the record.

8 Case Number 23-10210, ERBO Properties LLC. Now
9 the appearances of counsel, please.

10 MR. MARKOWITZ: Good morning, Judge Beckerman.
11 Scott Markowitz, Tarter Krinsky and Drogan, counsel for the
12 Debtors and Debtors in possession.

13 THE COURT: Thank you, Mr. Markowitz.

14 MR. SELBST: Good morning, Your Honor. Stephen
15 Selbst, Herrick Feinstein LLP for G (indiscernible) 190 LLC,
16 the construction and mortgage lender.

17 THE COURT: Thank you, Mr. Selbst. Good morning.

18 MR. BAUER: Good morning, Your Honor. Mo Bauer,
19 Duane Morris for 541 W 21 SME LLC, commonly referred to as
20 the mezzanine lender.

21 THE COURT: Thank you, Mr. Bauer. Good morning.

22 MR. BAUER: Thank you, Your Honor. Good morning.

23 MR. NASH: Good morning, Your Honor. Kevin Nash
24 for Higher Ground.

25 THE COURT: Thank you, Mr. Nash. Good morning.

1 MS. ZOURIGUI: Good morning, Your Honor. Jennifer
2 Zourigui of Ingram Yuzek for Cauldwell Wingate.

3 THE COURT: Good morning, Ms. Zouri.

4 Okay, I know that Ms. Tiantian had indicated that
5 she was going to be a bit late for this hearing, but I'll
6 ask if there are any other appearances.

7 Okay, all right, we have two matters on for today.
8 One was -- well, actually, it's three. Two were the
9 adjourned motions that I had heard at you know, two prior
10 days of testimony and argument and was prepared to rule on
11 but had adjourned to today.

12 So Mr. Markowitz, I guess I wanted to ask about
13 those motions and where do things stand with respect to
14 them.

15 MR. MARKOWITZ: Thank you, Your Honor. Well, as
16 we did meet on Friday, unfortunately, we didn't meet in the
17 courthouse because everyone couldn't make it to the
18 courthouse. I know that was hopefully the idea, but we met,
19 and we -- what happened in that meeting was it kind of
20 turned into -- we talked about the issues on the rejection
21 motion and the motion to Higher Ground -- to hire the new
22 contractor, Irving Oak, but it sort of delved into a global
23 settlement meeting because the mezzanine lender was there.
24 The fee lender was there, and we broke out into separate
25 rooms.

1 And we made substantial progress, and they made a
2 proposal. It was our global deal, which we were close to a
3 settlement, very close, and it has seemed to have fallen
4 apart in the last day, so we didn't really get into the
5 nitty gritty too much on the -- you know, the rejection
6 motion, because the global deal would have kind of resolved
7 that.

8 We did talk a little bit. Mr. Cecora was there
9 with representatives from Cauldwell Wingate, and they were
10 going through some numbers, and there's really no agreement
11 on the actual cost to get the building in a white box shape
12 with a temporary C of O. We still seem to have -- there
13 seems to be a dispute among the parties, but that wasn't
14 really, in my view, the major focus of the meeting.

15 We spent most of the time trying to reach a global
16 deal, which we made substantial progress on, but we still
17 weren't able to finalize it. Sundown went Friday, and they
18 made a deadline of sundown. We spoke some yesterday. We
19 tried to get it done, but we weren't able to do it, so as of
20 now, we have no settlement. I'm sure Your Honor doesn't
21 want to hear the great details of that because that's not
22 really you know, why Your Honor is here --

23 THE COURT: No, (indiscernible), I had an issue
24 with --

25 MR. MARKOWITZ: -- so you're calling balls and

1 strikes. I got it.

2 THE COURT: I --

3 MR. MARKOWITZ: So I just -- I mean, that's the
4 status where it is, and as far as today goes, I'd like to be
5 heard on that a little bit when the time comes, obviously,
6 to see exactly what Your Honor had in mind for today, but
7 that's what --

8 THE COURT: Okay, well, we can go onto that next.
9 What I had in mind for the day is, Mr. Bauer has a motion.
10 I scheduled a final hearing on the motion. I had an initial
11 hearing on the motion. I'm going to go forward with the
12 hearing -- the final hearing on the motion today unless Mr.
13 Bauer has another opinion about that.

14 Mr. Bauer submitted two declarations for, I guess,
15 parties in support of the motion. One of them, I see, Mr.
16 Cirz -- I hope I'm saying that right -- is here. And this
17 is supposed to be an evidentiary hearing where we're moving
18 forward to the final hearing --

19 MS. ZOURIGUI: Okay.

20 THE COURT: -- and this was all scheduled.

21 MR. MARKOWITZ: I'm ready for that.

22 THE COURT: So I have nothing else on my calendar
23 today for that reason, and so my assumption was that we were
24 going to proceed with Mr. Bauer's motion, and obviously, you
25 would have an opportunity to cross-examine these witnesses.

1 You chose not to put in any declarations for your own
2 witnesses, so that's where we are. That's the you know,
3 going to be the evidentiary record, and I'll hear arguments,
4 and I'll be prepared to rule. That's where I am. I
5 (indiscernible) few questions but --

6 MS. ZOURIGUI: Okay.

7 THE COURT: -- I've read everything. I'm prepared
8 to move forward today as was scheduled. And I guess my
9 question, though, is again, Mr. Markowitz, with respect to
10 your motions, I you know, my options are rule or adjourn.
11 So you can think about it.

12 MR. MARKOWITZ: Okay, well, I guess, depending
13 upon how you rule today, I mean, I have arguments on -- for
14 today, so I guess depending upon how you rule on the lift
15 stay motion. I mean, that, we're talking about --

16 THE COURT: I mean, I mean, I'm not -- I
17 understand that there's some, obviously some connection, but
18 obviously, I -- you know, I -- our evidentiary record was
19 closed on the other motion. I was prepared to rule. You
20 asked for an adjournment. I gave you an adjournment. I had
21 my ruling. I'm prepared to give it. I --

22 MR. MARKOWITZ: Okay.

23 THE COURT: -- you know, but I'll let you decide.
24 We'll go forward, Mr. Bauer's motion first, and at the end
25 of that, you can decide if you want me to rule or you want

1 to request a further adjournment. I mean, that's really up
2 to you.

3 MR. MARKOWITZ: Okay.

4 THE COURT: Okay?

5 All right, Mr. Bauer, I'm going to turn the
6 virtual podium over to you, as it's your motion.

7 MR. BAUER: Thank you, Your Honor. I appreciate
8 it. Mo Bauer, Duane Morris on behalf of the mezzanine
9 lender 541 W 21 SME. This is the mezzanine lender's motion
10 for stay relief, as Your Honor is aware, as set forth in the
11 declaration of Aaron Silverberg in -- Eran Silverberg in
12 support of the motion for stay relief, which the declaration
13 adopts everything that's in the actual motion, the
14 supplement of the motion, and also our responsive papers to
15 the prior motions that Your Honor had heard with regard to
16 the rejection, the Debtors proposed rejection of the Higher
17 Ground and Cauldwell agreements and the Debtor's motion
18 seeking to retain Irving Oak and Mabe.

19 But for purposes of the stay relief, really what I
20 want to focus on is that, one, the SME has a secured claim
21 by way of a pledge of the ownership interest in KOVA, which
22 is one of the Debtors. KOVA happens to own 100 percent of
23 ERBO properties, which ERBO Properties owns the subject
24 property that is at issue. Gold Mezz is the owner of KOVA.
25 SME has a claim against Gold Mezz, which is secured by the

1 pledge of the KOVA interests.

2 The claim -- we filed a proof of claim on behalf
3 of SME, which references that SME as of the petition date
4 was owed \$7.5 million by Gomez. We filed a proof of claim
5 also in the KOVA case for the same amount, as well as the
6 ERBO case, because of overtures made by Mr. Markowitz that
7 he wants to kind of make succotash of all three entities.

8 Gold Mezz is the only entity that is owned by the
9 Bodeks; which the Bodeks are Erno Bodek, who's the managing
10 member of all three entities, Laser Bodek, and Rachel Bodek.
11 Laser Bodek, I believe, is the son of Erno Bodek, and Rachel
12 Bodek is the wife of Erno Bodek.

13 What we have submitted to Your Honor, we submitted
14 a finder with, I think, 41 exhibits. As we proceed, we'll
15 probably -- we will seek to have all 41 admitted into
16 evidence for purposes of this hearing. One of the exhibits
17 is -- or actually, I should say two of the exhibits, one of
18 them being an original restricted appraisal report by
19 Newmark Group, and then a corrected restricted appraisal
20 report by Newmark Group. Both were attached to a
21 declaration submitted by Raymond Cirz, who is on the Zoom
22 call with us and will be our first witness.

23 Mr. Cirz is a licensed appraiser with Newmark, but
24 the appraisal, the corrected appraisal, valued the property
25 as is at approximately \$49 million, and the -- and if the

1 property were to be completed, with -- which -- with what
2 everyone envisions to be the partial TCO, getting it to that
3 point, Mr. Cirz values the property at \$52 million.

4 The secured debt of ERBO, G4 submitted a proof of
5 claim in the approximate amount of \$57 million. New York
6 City for real estate taxes filed a proof of claim that's
7 secured by the property in the amount of \$800 -- in the
8 approximate amount of \$822,000. G4's claim is also secured
9 by the property. I should have referenced that earlier.
10 Cauldwell Wingate filed a mechanic's lien claim secured by
11 the property in the approximate amount of \$2.2 million.
12 Higher Ground filed a -- an approximate secured mechanic's
13 lien claim in the amount of \$1.2 million.

14 We attached as one of our exhibits, namely Exhibit
15 Number 41, a claims analysis that I actually prepared in an
16 Excel spreadsheet that goes through all the proofs of
17 claims. The proofs of claims that hold themselves out at
18 being -- as being secured by the property aggregate \$61
19 million. The total unsecured claims against ERBO aggregate
20 approximately \$63.5 million, and the import of the total
21 unsecured claims, if you look at \$63.5 million --

22 MS. ZOURIGUI: You mean total claims -- sorry, Mr.
23 Bauer. You mean total claims, right, not total unsecured
24 claims?

25 MR. BAUER: Total claims, yes, I mean total

1 claims. Excuse me. The total claims aggregate -- against
2 ERBO Properties aggregate \$63.5 million. The import of that
3 is, if you take \$63.5 million minus either the \$52 million
4 number or the \$49 million number, which is the property
5 value as is today, you have a negative equity, which means
6 the pledged interest to my client is negative in value,
7 which means there's no equity in our lien, which under 362,
8 that would shift the burden over to the Debtors to show that
9 they have a plan that has a reasonable possibility of being
10 confirmed within a reasonable time period.

11 And when we get to after we hear the testimony of
12 Mr. Cirz, when we get to Part B, it's really -- the plan
13 that the Debtor filed doesn't have a reasonable possibility
14 of being confirmed. We submit that it doesn't. We think
15 that, Your Honor, there's cause to give stay relief under
16 362(d)(1) as well as (d)(2), as I just outlined. And also
17 in our motion, which we've briefed, is, SME is looking for
18 the exclusivity period to be terminated so that we would be
19 in a position to file a plan of our own in this case.

20 I will also bring to Your Honor's attention, if
21 you recall on May 4th, I kind of pushed the envelope to try
22 getting stay relief to go down the path of us being able --
23 us being SME -- being able to conduct a -- the UCC sale of
24 the pledged interest, which is one of the reliefs that we
25 would get if we got stay relief today. And I advised the

1 Court that my understanding was that it would take 60 days
2 to do that process.

3 Well, I'm going to stand corrected. The UCC
4 doesn't really provide a timeline for how long you have to
5 notice a sale. I will tell you that prior to the filing
6 date, we noticed it. It went for approximately 59 days
7 before the Debtor filed its Chapter 11. There were no
8 offers during that 59-day period. The terminology in the
9 UCC is commercially a reasonable amount of time.

10 Theoretically, we could put that pledge out for
11 sale for ten, 15, 20 days. We're going to be looking to
12 move as quickly as possible if we obtain stay relief, not
13 looking to get the -- go 60 days out, but that'll be for
14 Your Honor to determine at the conclusion. So with that,
15 I'd like to move to putting our appraisal of the value of
16 the property and put Mr. Cirz on the stand, if my I may,
17 unless Your Honor has any questions before that.

18 THE COURT: No, I don't.

19 Okay, all right, Mr. Cirz, I'm going to have to
20 ask you for a couple things. First, you're going to have to
21 take off your mute so I can hear you.

22 MR. CIRZ: That's much better, Your Honor.

23 THE COURT: Okay, great. Okay, so first thing I
24 have to ask you to do, Mr. Cirz, is would you please take
25 your camera and pan around your whole room? I need to see

1 that there are no other people in the room with you.

2 MR. CIRZ: I can do that to a degree, Your Honor.

3 I have a laptop, so it's got some limitation --

4 THE COURT: Yeah, you might have to move it
5 around. I understand. Do your best.

6 MR. CIRZ: Yep, you can tell me --

7 THE COURT: Okay, that's good. Okay, back on the
8 other side now. Okay, keep going. Sorry, in that
9 direction.

10 MR. CIRZ: Uh, Mr. Bauer is --

11 THE COURT: That one you were just doing, sorry.
12 The other -- yes, keep going, going, going. I just haven't
13 seen what's on the other side. Okay, pick a window or door.
14 Okay, fine. All right, and may I ask you what you have in
15 front of you, Mr. Cirz, in terms of documents? You can sit
16 back down, sorry.

17 MR. CIRZ: Okay. If I get that in the right spot,
18 Your Honor.

19 THE COURT: Okay, no problem.

20 MR. CIRZ: And then -- so what -- I have a pad in
21 front of me with notes report --

22 THE COURT: Okay, can't have those.

23 MR. CIRZ: (Indiscernible). Okay.

24 THE COURT: Those have to go -- put it in a drawer
25 and shut the drawer so I can hear you do it. Do you have a

1 drawer at your desk?

2 MR. CIRZ: (Indiscernible)?

3 THE COURT: Do you have a drawer in your desk?

4 MR. CIRZ: Yes, yes.

5 THE COURT: Okay, open the drawer.

6 MR. CIRZ: (Indiscernible).

7 THE COURT: Put the pad in and shut it so we can
8 all hear it.

9 Okay, fine. Next. Sorry.

10 MR. BAUER: Mr. -- Mr. Cirz, the only documents
11 you're allowed to have in front of you are the declaration
12 and supplemental declaration that you executed. The
13 original appraisal that you -- that Newmark prepared, and
14 the corrected appraisal that Newmark prepared.

15 MR. CIRZ: I have (indiscernible).

16 MR. BAUER: Those are the only documents that you
17 have?

18 MR. CIRZ: I have all four. They're on my --
19 they're electronic on my screen, PDFs.

20 THE COURT: Okay, that's fine. Do you have
21 anything else on your screen?

22 MR. BAUER: I knew that question was coming.

23 MR. CIRZ: No other documents, Your Honor, other
24 than looking at everybody today on Zoom.

25 THE COURT: Okay, all right, I'm going to accept

1 that because I can't be in the room with you, Mr. Cirz, so
2 that's the best I can do here. All right, so may I ask you
3 to raise your right hand, please?

4 Okay, Mr. Cirz, do you swear to tell the truth,
5 the whole truth, and nothing but the truth?

6 MR. CIRZ: I do.

7 THE COURT: Okay, all right, Mr. Bauer, I'll turn
8 him over to you for your -- moving his declaration. So ask
9 him questions about that, and moving it into evidence.

10 MR. BAUER: Great, thank you, Your Honor. And I
11 will supplement some of the items that are in the
12 declaration, if I may, but it'll still be a truncated direct
13 testimony.

14 VOIR DIRE OF RAYMOND CIRZ

15 BY MR. BAUER:

16 Q Mr. Cirz, do you have the declaration that you executed
17 and the supplemental declaration that you also executed?

18 A I do.

19 Q Okay, and are both the -- and the initial declaration
20 that you filed had attached to it an appraisal. Is that
21 correct?

22 A That's correct.

23 THE COURT: Mr. Bauer, just give me one second.
24 I'm going to pull out my binder, so I have one more thing I
25 have to get that's across my office also, so my apologies

1 for a second here.

2 MR. BAUER: That's fine, Your Honor.

3 THE COURT: Yeah, I should have done it before.

4 All right, okay, sorry. The binder with the reports --

5 MR. BAUER: Right.

6 BY MR. BAUER:

7 Q The original appraisal, Mr. Cirz, and for the Court and
8 every -- and all other parties, that's Exhibit 1 of our
9 binder. That original appraisal is dated May 21st, 2023,
10 correct?

11 A I believe so. In my notes, I have all these dates, so
12 --

13 Q (Indiscernible) --

14 THE COURT: So Mr. Cirz, what I'm going to suggest
15 you do, sorry, is open up your original appraisal. Take a
16 look at it, and then answer the question about the date.
17 Okay?

18 THE WITNESS: Yes, Your Honor. May 21st, 2023,
19 that's correct.

20 BY MR. BAUER:

21 Q And that original appraisal was attached to your
22 initial declaration. Is that correct?

23 A Yes.

24 Q Okay, and then your supplemental declaration, that had
25 attached to it a corrected appraisal dated June 2nd, 2023,

1 is that correct?

2 A Yes.

3 Q Okay, which for purposes of this hearing was Exhibit 2
4 in the binder that I've provided everybody. I'm going to
5 focus on the corrected appraisal, Mr. Cirz.

6 A Okay.

7 Q I'm going to turn you to your CV, which actually may
8 not have a page number on the version you're looking at on
9 the computer, but for everybody on this call, it is actually
10 Page 142 of 147, which was the PDF file up at the top.

11 A You -- excuse me, you didn't deliver a binder to me,
12 correct?

13 Q It would have been emailed to you. You would have
14 gotten every exhibit with a -- in a file of its standalone
15 in an email.

16 A Okay --

17 Q There would have been like, four emails that got sent
18 to you. But it says "corrected appraisal" if you have that,
19 which is dated June 2nd, which was attached to his
20 declaration -- his supplemental declaration. Mr. Cirz, did
21 you see your CV?

22 A I do.

23 Q And does this CV summarize all of your qualifications,
24 your educational background, and your professional
25 affiliations?

1 A It does.

2 Q Okay, and what you pointed out to me yesterday, it also
3 has your license, which of note, expires in two days,
4 correct?

5 A That's correct.

6 Q And what is this license?

7 A This is the license from the date of New York as a
8 general certified real estate appraiser.

9 Q Okay, and has this license been renewed?

10 A Yes, I have my new license in hand.

11 Q Great, and how long do these licenses typically run
12 for?

13 A Two years.

14 Q Okay, great.

15 MR. BAUER: For all parties and Your Honor, I'd
16 like to move Mr. Cirz, based on his CV and his shortened
17 testimony, as an expert in valuation.

18 THE COURT: Of real property?

19 MR. BAUER: Of real property, that's correct.

20 THE COURT: All right, any objections?

21 UNIDENTIFIED MALE: No.

22 THE COURT: Okay, all right, Mr. Cirz, you are
23 qualified as an expert witness for real property valuation.

24 (Raymond Cirz was qualified as an expert witness
25 for real property evaluation.)

1 THE WITNESS: Thank you.

2 DIRECT EXAMINATION OF RAYMOND CIRZ

3 BY MR. BAUER:

4 Q Mr. Cirz, could you tell the Court what was your
5 opinion as to the value of the subject property as of today?

6 A In the current news report, in a letter of transmittal,
7 it'll describe the values that I came up with. So the as-is
8 value means just as the -- as it appears as of June 1st of
9 this year is \$49 million.

10 Q And you have two other values in -- that you have
11 opined on. Can you state what those values are and what
12 they mean?

13 A Yeah, the second value is as of June 1st, 2027, and
14 that's the date we say that the property is stabilized.
15 Once the property has been you know, physically finished,
16 has been leased, and is on a stabilized basis as far as
17 rent, and that estimate is \$82 million.

18 The third estimate is, we're asked to give a -- an
19 estimate of value upon an issuance of a temporary
20 certificate of occupancy. And the assumption there is it
21 would take one year to get that, and that was -- so that
22 would make it June 1st, 2024, and the estimate there is
23 \$52,600,000.

24 Q Okay, you heard me reference earlier, and it's -- your
25 supplemental attaches -- supplemental declaration attaches a

1 corrected appraisal from the original appraisal that you
2 guys prepared or Newmark prepared in May, on May -- dated
3 May 21st, 2023. Why the correction?

4 A What I did was I was looking through the report, and
5 what I did is I spotted a couple minor things on this second
6 page of the letter of transmittal on the second paragraph.
7 There was a number in there that was incorrect. It didn't
8 relate to anything. It was talking about -- we assumed, in
9 order to build out the office space, you would spend \$120 a
10 square foot times 64,000 square feet of office space. And
11 we referenced a number that didn't match with that number,
12 so what I did, was to avoid the confusion, I just deleted
13 that number. But --

14 Q All right --

15 A -- our analysis stays -- remains unchanged.

16 Q Okay, so when I try to -- so that everybody understands
17 this testimony, it's Exhibit 1. It is -- of the PDF it's
18 Page 8 of 147 of the original appraisal dated May 21, 2023.
19 And Mr. Cirz's testimony referenced Page 2. Are you there,
20 Mr. Cirz?

21 A Yes.

22 Q Okay, what number are you pointing to that -- or what
23 change are you referencing in -- on that page that was made
24 so that everyone understands it and sees it?

25 A If we go to the second paragraph, the third line,

1 you'll see that we're just giving information in the letter
2 of transmittal about our analysis. And it says we used \$120
3 per square foot to lease up 62,000 square feet of office
4 space, and you'll see the number in there is some strange
5 number. It's \$6,000,360.

6 And if you do the math, you won't get that number, so I
7 have no idea how we got that number, so I deleted that
8 number. And basically, the new report is accurate, saying
9 \$120 per square foot was applied to 62,000,000 square feet
10 of office space to be leased.

11 Q Great, thank you. The original report has a market
12 value as-is number of \$48 million, and the new report has a
13 market value as is of 49 -- of \$49 million. Why did that
14 dollar amount change?

15 A Again, as I looked at the report, typically, when you
16 value real estate, you're analyzing a property on a
17 stabilized basis over a ten-year period, and so what's
18 atypical about the subject property is that it's vacant. So
19 we have to allow for enough time to finish any kind of
20 physical details that need to be done, you know, get the CO,
21 find tenants, lease it up.

22 And so if you look at our cash flow that we had on Page
23 -- of the original report, Page 96, what happened was we
24 should have allowed four years of un-stabilized income, plus
25 ten years of stabilized income would equal a 14-year holding

1 period. And if you look at Page 96, we did a 15-year
2 holding period. Not a big deal, but when I saw that, I said
3 "You know what? We really should use a shorter holding
4 period." We should use four years of lease up; ten years,
5 make it 15. And you see originally we did 16.

6 It resulted in a very minor change overall. It was
7 about \$300,000 difference between the two scenarios, and the
8 first time we rounded to the nearest -- well, we always
9 rounded to the nearest million dollars, and so what happened
10 was we rounded to \$48 million the first time. For the
11 second time, we did it and shortened the cash flow by one
12 year. We rounded up to \$49 million.

13 MR. BAUER: All right, Your Honor, for the record,
14 when Mr. Cirz was referencing Page 96, that would have been
15 in the original appraisal, Page 101 of 147 of the PDF. And
16 then for real ease, if you were to look at the new
17 appraisal, that same cash flow projection is also Page 96,
18 but it's Page 101 of 147 of that. It's also the same PDF
19 page, 101 of 147. So if you were to compare those two
20 documents, you would see Mr. Cirz's testimony of reducing
21 the period from 16 to 15 years, as he just testified to.

22 THE COURT: Okay, just give me one second. I -- I
23 looked at the first. I need to look at the second.

24 MR. BAUER: Mr. Cirz, is my statement correct in
25 that regard?

1 THE WITNESS: Yes.

2 MR. BAUER: Thank you.

3 THE COURT: Sorry, thank you.

4 MR. BAUER: Great.

5 BY MR. BAUER:

6 Q Mr. Cirz, I note in your appraisal that Newmark used
7 the three methodologies, or at least described the three
8 common appraising methodologies; income approach, sales
9 approach, and cost approach, and that your appraisal only
10 used the income approach. Why was that?

11 A Because we thought that was the most appropriate method
12 to use, and the reason being is that's how any typical
13 investor would approach valuing the property and determining
14 what they would pay for the property in its current
15 condition.

16 Q And how would you describe its current condition?

17 A Well, you know, it's over 100-year old former
18 industrial building that's been convert -- that's being
19 converted into quality office space. But the property is
20 totally vacant as of today, as of the date of value, and
21 that somebody would reflect the risk associated with leasing
22 up that -- the space. So there would be market risk
23 associated with it.

24 So the -- so the appropriate method to value the
25 property would be the income approach and a discounted cash

1 flow analysis, because that's how any typical buyer would
2 approach their analysis in determining what they would pay
3 for the property.

4 Q You just referenced in your testimony discounted cash
5 flow analysis. Why would you use a -- is there another
6 alternative analysis, I think, direct capitalization
7 analysis that could have been used?

8 A Yes, that's true.

9 Q Why would you use discounted cash flow over direct
10 capitalization analysis?

11 A Because you -- basically, you would use a direct cap
12 analysis if the property was stabilized. So if the property
13 was performing at market levels, you had a steady income
14 stream, you have capitalization as a great way to go. The
15 problem is the property is not stabilized. It's several
16 years away from being stabilized, and so any particular
17 investor would buy this property in its current condition,
18 they have to assume the risk of finding tenants. They have
19 to go to the expense and -- of securing tenants, paying
20 leasing commissions.

21 Physically, the space is not in a condition that you
22 can -- a tenant could occupy, so you're going to have tenant
23 installation allowances that are significant, and so any
24 investor would anticipate that there's going to be
25 significant risk and significant capital expenditures in

1 order to get it to a stabilized level.

2 They would also assume over a reasonable time period
3 how long it would take to secure tenants. So all those
4 things go into the analysis and show that we're several
5 years -- we're five years away from stabilization, based on
6 our estimates. So you can't really capitalize. You have
7 zero income today, so there is nothing to capitalize, so
8 that's why the DCF is the most appropriate way to approach
9 the valuation of the property.

10 Q So I'm going to turn you to Page -- what you refer to
11 as Page 96, which I prefer to -- for everybody else on this
12 call as Page 101 of 147 of the PDF, if they were to look at
13 it at the top of the page, which is your discounted cash
14 flow analysis.

15 A I'm there.

16 Q And I think it's your testimony that was the driver for
17 the -- for the \$49 million valuation? Am I correct?

18 A Yes, any -- this -- anybody buying the property is
19 going to address the different issues that appear within
20 this cash flow.

21 Q Okay, so can I -- I'd like to ask you some questions
22 about the numbers, where they were derived from in this
23 discounted cash flow. Your base rental revenues, where was
24 that? How did you -- how did Newmark and you pick those
25 numbers?

1 A I'm going to try and reference a prior page that'll
2 summarize all the key assumptions that went into the
3 valuation. That, I think, would be helpful to the Court.

4 Q Great.

5 A And I'm not going to peek at my notes to know what page
6 that's on, so it might take a minute.

7 THE COURT: That's okay. Take your time.

8 THE WITNESS: The -- if we go to Page 92, Page 92
9 summarizes key assumptions that were built into the cash
10 flow model. You can see what we did was, our start date of
11 the analysis is June 1st of this year, which coincides with
12 the valuation date. We did a cash flow. You can see we did
13 a -- an as-is cash flow of 15 years. It's on the left-hand
14 side. And anybody stop me when -- you know, if you need me
15 to point out something.

16 But if we go down on the lefthand side, we can see MLAs
17 or market leasing assumptions. So these are key to the
18 valuation. This is what we're thinking that is achievable
19 in today's market. So we have some basement retail space.
20 We have retail ground floor space, and then we have office
21 space. If you add all that up, that'll be 74,000 square
22 feet, which is the rentable area of the building.

23 Next, if we move over to the left -- to the right,
24 it says "market rent per square foot." And here, we came up
25 with estimates of what is achievable in today's market for

1 this different space, so we're saying the basement would be
2 \$20 a square foot. The retail space would be \$125 per
3 square foot, and office space would range between \$80 and
4 \$90 per square foot on a modified gross basis, depending on
5 what floor you're on. As you get higher up in the floors,
6 you get a higher rent.

7 Now, where did we come up with these assumptions?
8 They're based on our knowledge of the market. Newmark has
9 the most active office building valuation team in the city
10 that I'm aware of. We do over 100 office buildings per
11 year, so we're constantly in the market. We have a huge
12 database that -- from those 100 properties that we appraise,
13 we gather all information regarding recent leases. We talk
14 to the leasing agents. We go to our Newmark leasing
15 brokers, because they're very active in the market, and they
16 help guide us as to what their thinking is as to what the
17 market is.

18 Also in this case, we also had a BOV, which is a
19 broker's opinion of value. That was prepared by Jones Lang
20 LaSalle or JLL, and they're a major commercial brokerage
21 firm in New York City. And we were looking at what they
22 did. They did a broker's opinion back in October of 2022,
23 and their estimates were pretty much in line with what we
24 have, so it gave us a pretty good confidence level --

25 MR. MARKOWITZ: Object -- I object to that

1 testimony because I think that's hearsay, Your Honor.

2 THE COURT: Okay, well, it wouldn't be hearsay if
3 he actually provided what he was talking about, but I'm
4 going to sustain your objection.

5 I know what you're talking about, Mr. Cirz, but we
6 don't have the documents in front of us. You aren't -- the
7 document hasn't been admitted into evidence. There isn't
8 somebody test -- explaining how it was prepared, so we're --
9 that's why I'm striking your testimony. I'm just letting
10 you know.

11 THE WITNESS: Okay, if we continue on that chart,
12 Your Honor, you'll see we made certain assumptions. Free
13 rent is common in the market. You've got to give free rent
14 to get tenants, so let me concentrate on the office, because
15 that's where the value is.

16 So an office space, we assumed that somebody would
17 sign a ten-year lease and would get 12 months free rent. We
18 also assumed the buildout. We assumed \$120 per square foot
19 to build out the office space in order so that we can get
20 \$80 to \$90 per square foot rents. So those were the key
21 elements that went into the cash flow that appears on -- and
22 I forgot the page number, 90 -- was it --

23 MR. BAUER: Ninety-six.

24 THE WITNESS: Ninety-six, so if we want to go back
25 to 96, I can explain the cash flow.

1 THE COURT: Okay.

2 THE WITNESS: And here, on the cash flow, I'm just
3 going to enlarge it so I can read it. You can see like, in
4 the beginning, the first year, we have no revenue coming in,
5 and we have to pay certain expenses. We calibrated the --
6 oh, just for operating expenses, we have operating
7 statements for hundreds of buildings in New York City. We
8 know what it costs to operate, so we estimated the typical
9 operating expenses for this particular building.

10 But for the first year, we're going to have some
11 of -- we're not going to incur full expenses, because for
12 example, cleaning -- you know, we have no tenants, so
13 there's going to be a limited cleaning expense, but there's
14 certain other expenses that you can't avoid, such as real
15 estate taxes that you know, the city wants taxes, no matter
16 if the building's leased or unleased, so we incurred
17 expenses. Insurance is another example. You have to insure
18 the property, and the insurance company doesn't care if it's
19 vacant or not. You have to pay -- insure it for the
20 construction cost of the building.

21 So what we did was we modified our operating
22 expenses as we assumed the building would lease up, and this
23 is what any investor would do in New York City. So you can
24 see in year two, we start to generate some revenue. Year
25 three, we're generating some more. And year five, the base

1 revenue is up to \$6.3 million, which is really a stabilized
2 level. However, we still have this overhang from free rent,
3 and that prevents us from having a stabilized income stream
4 in year four, and so it's finally in year five is when it's
5 stabilized, and we're at \$4.9 million in net income
6 stabilized.

7 And you can see subsequently, you know, it starts
8 to grow, but year five is our first year of stabilization,
9 so we have an income stream that a typical investor would
10 anticipate in buying the property. So next, what you have
11 to do, is come up with a discount rate and a reversion
12 capitalization rate in order to convert that into a value.
13 The -- so the reversion cap rate is what some -- what we can
14 resell the property for at the end of our holding period, so
15 we're going to -- we're going to sell it to a third party.

16 And our assumption was that we could sell it at a
17 5.5 capitalization rate. Where do we get the 5.5? Again,
18 we have a wealth of data to support other properties that
19 have been purchased. We also confer with the brokers. We
20 also confer with investors. Many lenders, too, are clients.
21 I also included sales in the addenda of the report that help
22 support all our assumptions that went into the cash flow.

23 So we use the 5.5 percent terminal capitalization
24 rate, and lastly, we have a discount rate that needs to be
25 applied. In the bottom chart in the center, you'll see a

1 blue line, and that coincides with a value of \$48,385,000.

2 And again, this is based on the first report, so the cash
3 flows haven't changed, but I'm referring to the -- this is
4 the -- this is the first report that we did, so it's not the
5 corrected --

6 BY MR. BAUER:

7 Q I -- if I can get you to look at the corrected report -
8 -

9 A Go to --

10 Q -- that -- I mean, the pages are the same, but that's
11 the report that's really in effect today, is your corrected
12 one, because you -- your amount actually came in a little
13 bit higher, but you -- that's where you made an adjustment,
14 so if I can get you to pull that up.

15 A Yeah.

16 Q You still have a blue box there. The number happens to
17 be a little higher on Page 96.

18 A Yep.

19 Q You see it?

20 A (Indiscernible) as is, yep. Page 96. I just need to
21 blow it up so I can read it.

22 THE COURT: I have it gridlocked.

23 MR. BAUER: That's exactly what I intend to do.

24 THE COURT: I understand. I haven't pulled out my
25 magnifying glass just yet, Mr. Cirz, but it's in the desk.

1 THE WITNESS: Hopefully, you don't need it.

2 MR. BAUER: We all have one.

3 THE WITNESS: So on the corrected report, you'll
4 see the value's \$48,728,000, which now rounds up to \$49
5 million. And so that's at a discount rate of 7.25 percent.
6 And again, where do we get the 7.25 percent? You know, we
7 have a lot of information. We know about all the
8 transactions that are occurring. In the addenda of my
9 report are, I believe, eight different sales, some of which
10 are very, very current, which support the assumptions that
11 went into the analysis.

12 BY MR. BAUER:

13 Q Can I stop you there? Because you did not do a sales
14 comparison approach, but you did do an addendum that has the
15 sales that you just referenced. Why did you include that
16 addendum if you didn't do a sales comparison report --
17 (indiscernible)?

18 A Well -- yeah, first of all, like a sales comparison
19 approach didn't -- wasn't required in order to come up with
20 a credible value, the reason being is that we're using what
21 the market does. The market would do a DCF. The market
22 would then turn around and say, okay, you know, we value
23 this thing at \$49 million, which is about \$660 a square
24 foot. The market participants would go out and look at
25 recent transactions to say, how does that stack up with the

1 value that we came up with? And so we included the
2 transaction data, which shows that the assumptions that we
3 used were all market-oriented.

4 Q Okay, and those sales comparisons, looking at the
5 corrected appraisal, I think it's Addendum B, which is Page
6 123 of 147 on the PDF, you don't have a page number, Mr.
7 Cirz, on it, but are you at that addendum?

8 A I'm at -- almost. Yeah, I'm there, Addendum B.

9 Q All right, and then the next page after that is, I
10 guess, you tell me, is that your first -- your -- are those
11 your sales comparisons?

12 A Yeah, there'll be eight different sales that are
13 summarized here.

14 Q Okay, and briefly, can you kind of run through those
15 and how they were utilized in this appraisal?

16 A Yes, it should be -- you got to realize the market is
17 distressed right now. Vacancy levels are very high. We're
18 in the Chelsea submarket. Vacancy is even higher in the
19 Chelsea submarket. Rent levels have been distressed, so
20 there's very few transactions. However, we do so many
21 appraisals for so many either acquisitions, the lender,
22 pension funds that own the property, so we have great data.

23 Here, we have a May 23 property transaction. It's
24 under contract. It hasn't closed yet, but it's under
25 contract, and so it's a property located in the Diamond

1 District. It's a property that has some distress to it, so
2 if the subject property is distressed, we're vacant. Right?
3 We have a lot of problems with vacancy.

4 So here, this is a confidential transaction. It sold
5 with an adjusted capitalization rate of 5.5 percent, a
6 discount rate of 7.5 percent. It was 55-percent leased, so
7 it had 55 percent, so it had a lot of vacancy. It's got
8 some risk, and the discount rate used there was 7 1/2. We
9 used the 7 1/4 on us. This particular property, I believe,
10 has some significant rollover occurring, where you can have
11 -- while we're 55-percent leased, we're also going to have
12 tenants vacating -- or not vacating, but leases expiring.

13 So also look at the price per square foot, \$543 a
14 square foot. We're at six -- about \$660 a square foot. So
15 I think it was pretty helpful in having knowledge of this
16 sale. If you would like, do you want me to take you through
17 some other sales?

18 Q I -- yeah -- well, when you characterize the other
19 sales that follow -- yeah, go ahead. Take us through the
20 next one. That'll be helpful.

21 A The second sale is Park Avenue Tower. And so this is
22 April of 2023, so this is current information. Oh, by the
23 way, there's eight sales presented here. We did the
24 appraisal on seven of the eight, so we knew about the
25 transaction. We talked to the investor. We had current

1 information about their thinking -- the thought processing
2 that went into their decisions as to what to pay for these
3 properties.

4 So we -- sale number two is Park Avenue Tower, April of
5 '23, so it's very current. This property had 83-percent
6 lease, so it had some vacancy, not horrible. But I believe
7 this one's going to have significant rollover as well
8 occurring. Yeah, so the remaining lease term on existing
9 leases is only 3.3 years, so this property is perceived as
10 having significant risk, exposure to the market because of
11 the short-term leases that are in place.

12 The discount rate on this one was 7 percent that was
13 used by the investor, so again, we're at a 7 1/4, reflecting
14 a vacant building. This one has significant risk. It's --
15 it's 83-percent leased, but a lot of turnover coming up.
16 They used the 7-percent discount rate. Sale number one
17 problems, a 7 1/2 was used there, so I know my 7 1/4 is in
18 the right neighborhood. If you look at the sale price per
19 square foot, it sold for \$600 a square foot. We're at \$660
20 a square foot, so we know we're in the right neighborhood
21 based on two very, very current transactions.

22 Sale number three is of interest because that's pretty
23 darn current. So that's a building, 149 Madison Avenue. It
24 was a February of 2023 sale. And I'd like to just back up,
25 because the more current, the better, because interest rates

1 -- everybody knows the Federal Reserve has been raising
2 interest rates for the last year. They're up over 5
3 percent. It's had an impact on investor requirements, so
4 investors have gotten -- need higher rates of return to
5 reflect higher interest rates, higher borrowing costs. So
6 we want to stay with transactions as close to the valuation
7 date as possible. Just bringing that up because some of
8 these are a little bit more dated. You know, you get a year
9 from now, and it's -- you know, it's a different market.

10 So this sale, February of '23, so very current, this
11 building was bought vacant, so it's the same as us. It's
12 bought vacant. It sold for \$647 a square foot
13 (indiscernible) \$660 a square foot, so again, very helpful.
14 Helps tell us that you know what, we're right in the right
15 ballpark for the valuation of our property.

16 Then after this, is it 22 -- no, okay, next sale
17 is January of '23. So it's not too far off from the
18 valuation date. This one sold 84-percent leased. It sold
19 with a 6 1/4 discount rate, and so this property is much
20 safer overall. The income stream is much safer than we are,
21 which we're vacant. So it sold for \$1,000 a square foot,
22 84-percent leased, a 6 1/4 discount rate.

23 This one is very helpful in determining our
24 stabilized value, because our stabilized value was right
25 around \$1,000 a square foot, and I believe we used a 6 1/2

1 discount rate on the stabilized value. So this tells us
2 that our stabilized value is in the right ballpark.

3 Q And when you say "stabilized," what -- what do you
4 characterize stabilized as being?

5 A That's year five, when we're assuming the property is
6 leased up to a market level. The free rent's been burned
7 off. There's no more tenant installation allowances.
8 There's no more tenant rollover occurring, so the property
9 is in a -- you know, has a stabilized income stream.

10 Q Thank you. You may continue with your -- with the
11 sales counts.

12 A The next sale is 79 Fifth Avenue, so now this is
13 getting older. It's June of '22. The Fed started raising
14 rates, but nobody knew how high they were going to go. This
15 particular property is helpful. It was 100-percent leased.
16 It had good quality tenants. Ernst -- I believe Ernst and
17 Young had two floors that they leased in this building. It
18 had good quality retail tenants. The retail tenants
19 included Coach, Free People, and a Citibank -- a Citibank
20 bank branch. And so we had high-quality tenants in the
21 building.

22 The New School was the anchor tenant in the building.
23 And I'm trying to go from memory. Yeah -- it's in the
24 report, so New School leased over 200,000 square feet in
25 this building, so this is a very desirable property, located

1 in a good location, and it was 100-percent leased, and it
2 sold for \$800 per square foot, so again, this is telling us
3 we're at \$1,000 a square foot stabilized. This is telling
4 us that this is pretty representative of a stabilized
5 building. With the market change happening in the market,
6 it probably wouldn't go for \$800 in today's market, just
7 because it's -- the cap rates have increased.

8 So after this, the other sales are getting a little
9 more stale, January of '22, but you can see we have cap
10 rates. We have discount rates for them from stabilized
11 buildings or riskier buildings, and I think they're all
12 helpful in supporting that our assumptions are reasonable
13 and market-oriented.

14 Q Right, and you're -- the as-is value for the subject
15 property, what did you find it to be?

16 A \$49 million.

17 Q Great.

18 MR. BAUER: Your Honor, I have nothing more to add
19 to Mr. Cirz's testimony. I gladly hand him over for cross.

20 THE COURT: Okay, I assume you want me to admit
21 his two declarations into evidence?

22 MR. BAUER: Yes. Yes, I would -- yes, Your Honor.
23 I --

24 THE COURT: Okay, any objection to my admitting
25 the two declarations into evidence?

1 MR. MARKOWITZ: No, Your Honor.

2 THE COURT: Okay.

3 MR. MARKOWITZ: And that includes the
4 (indiscernible).

5 (Raymond Cirz's two declarations were admitted
6 into evidence.)

7 THE COURT: So those will be admitted into
8 evidence, and that assumes also that we are also admitting
9 Exhibits 1 and Exhibits 2, which were attached to the
10 declarations, also into evidence, the appraisals. Is there
11 any objection to that?

12 MR. MARKOWITZ: No.

13 THE COURT: Okay.

14 (Exhibits 1 and 2 were admitted into evidence.)

15 THE COURT: All right, then Mr. Markowitz, you may
16 proceed with cross-examination.

17 MR. MARKOWITZ: Okay. Good morning, Your Honor.
18 Good afternoon? Good morning?

19 Good morning, Mr. Cirz --

20 THE COURT: Good morning.

21 MR. MARKOWITZ: It's still -- I look at my
22 (indiscernible).

23 THE COURT: It's only 10:57. It hasn't been that
24 long.

25 MR. MARKOWITZ: Okay, it only seems that way.

1 Okay.

2 CROSS-EXAMINATION OF RAYMOND CIRZ

3 BY MR. MARKOWITZ:

4 Q Mr. Cirz, my name is -- am I pronouncing your name
5 correctly?

6 A That's Cirz, yes.

7 Q Cirz. My name's Scott Markowitz, and I represent the
8 Debtor. I'm going to ask you some cross-examination
9 questions. One, first -- did -- who -- did you prepare this
10 appraisal?

11 A Yes.

12 Q Okay. You didn't go see the property, though, did you?

13 A I did not.

14 Q Okay. Is it typical when you appraise a building that
15 you go in and walk around the building, see the -- you know,
16 the quality level of the building and things of that nature?
17 Is that typical?

18 A Yes.

19 Q I want to -- I want to refer to your old appraisal. I
20 unfortunately don't have your whole new appraisal printed
21 out, but you're -- they're substantially similar. Your old
22 -- your first appraisal, I want to turn to Page 90. Can you
23 go to that? That's the appraisal that you initially
24 submitted.

25 A Okay, I'll be there in a minute.

1 Q Thank you.

2 THE COURT: Mr. Markowitz, when you say "90," are
3 you saying on PDF --

4 MR. MARKOWITZ: It's on Page 90 of the appraisal -
5 - hold on, let me show --

6 THE WITNESS: Your Honor, (indiscernible) --

7 MR. MARKOWITZ: -- on Page 90 of the appraisal on
8 the ECF, because I do have the -- on what I -- on my
9 document version --

10 THE COURT: Ninety-five.

11 MR. MARKOWITZ: Yeah, it's 95 of 147 on what was
12 filed, I think --

13 THE COURT: Okay.

14 MR. MARKOWITZ: -- according to what I have
15 printed out here.

16 THE WITNESS: So am I on Page 90 of the PDF?

17 MR. MARKOWITZ: It's Page 90 of the appraisal
18 where it talks about rent roll tenant overview. It's at the
19 bottom. It's Page 90 of your initial appraisal under --
20 Page 95 of 147 on what was filed with the Court, I believe.

21 THE WITNESS: I'm there.

22 MR. MARKOWITZ: Okay.

23 BY MR. MARKOWITZ:

24 Q And you see it says "rent roll tenant overview." You
25 see that?

1 A Yes.

2 Q And it says "The revenue to be received is derived from
3 various tenant types. The estimated rental revenue
4 estimated has been based on new market view of the rent roll
5 and the leases provided by the owner as of the date of this
6 appraisal." What lease did -- what leases did the owner
7 provide you the day of the appraisal?

8 A You know, that's obviously a mistake. The property is
9 vacant. There is no leases in place.

10 Q Okay, so you -- so the owner didn't provide you with
11 anything. Right, is that correct?

12 A That's -- to my knowledge, yes.

13 Q Okay. Did you -- when you got information regarding
14 the building, who did you get it from?

15 A Actually, associates of mine requested the information,
16 and they've got information from the mezz lender.

17 Q But no one contacted the owner to seek information. Is
18 that correct?

19 A To my knowledge, no.

20 Q Okay. Okay, when -- your original appraisal had the
21 stabilization date of June 1st, 2028, and then you moved it
22 back a year. Why did you say it would be stabilized a year
23 earlier on your amended appraisal?

24 A If we go to -- is it Page 96 of the first appraisal?
25 There's a cash flow, and I can point that out to you.

1 Q Okay. Okay, looking at that. It's page 101 of 147, I
2 believe, on the docket.

3 A Okay, so -- yeah, so this -- so the first appraisal, we
4 -- and if you look at the top, you'll see different years,
5 so the first appraisal used year six as a stabilized year.
6 And when you look at the cash flow, it's really -- it's
7 really year five, so go down about halfway on the lefthand
8 side. You're going to see net operating income. And you
9 can see it's a --

10 Q Got it.

11 A -- it's a negative million dollars in the first year.

12 Q Right.

13 A And it starts to increase. So if we look at it, year
14 five, ending May of '28, is \$4 million rounded, \$4.9
15 million, and the next year, it's \$4.9 million, and it
16 becomes \$5.1 million and starts to grow. So you can see,
17 \$4.9 million is the first stabilized year. It's much less
18 in each of the other four years.

19 Q Okay, so why did you -- so it's your testimony that the
20 building, in your opinion, won't be stabilized until June of
21 2027, correct?

22 A (Indiscernible).

23 Q You used June of 2027 as a stabilized date, correct?

24 A Yes, I believe so.

25 Q Okay, and if the building, for example, was completed

1 quicker and stabilized quicker, would that change the value?

2 A It probably would have some impact on the value, just
3 because even -- because you would have a shorter holding
4 period, and between the two appraisals, I shortened it, and
5 it made about a \$300,000 difference.

6 Q So that would increase it, correct?

7 A Yes.

8 Q Okay, with -- you used a buildout cost for the tenant -
9 - to get tenants at \$120 per foot, correct?

10 A For office space, yes.

11 Q Right, and let's say it was \$100 a foot. Would that
12 change the value?

13 A Yes, that would probably -- that would increase the
14 value.

15 Q Okay. So your appraisal date is as of June 1st, 2023,
16 correct?

17 A Yes.

18 Q Can you form an opinion as to the value of the property
19 as of February 13th, 2023?

20 A I wasn't requested to do that.

21 Q Well -- okay, but would -- do you think the property --
22 I mean, based on your experience, that's the only
23 (indiscernible) market able to make three or four months,
24 right?

25 A Yep.

1 Q Do you think the property was worth less than that on
2 February than the \$49 million or more or the same?

3 A I would think about the same.

4 Q So do you think the property is increased -- is
5 decreasing in value at -- right now?

6 A I estimated \$49 million. I don't understand --

7 Q Right, but I'm saying, do -- and that \$49 million, then
8 you estimated that if you get the partial TCO, that it'll be
9 \$52 million, right?

10 A Yes.

11 Q And did you form an opinion as to the cost of getting
12 the partial PCO?

13 A I don't believe so.

14 Q So when you used the June 1st, 2024 date, which
15 approximately one year from now, you get the partial TCO.
16 How did you come out with -- come up with that? Did
17 somebody tell you it would take a year? Did you do your own
18 research on it? How did you come up with that date?

19 A I believe it was provided by the client.

20 Q So you took that as a given?

21 A Yes.

22 Q Okay. So my -- go back to my question. Sitting here
23 today, you think the property as is, in its current
24 condition, is worth approximately \$49 million, correct?

25 A Yes.

1 Q And then in a year from now, if you spend some money,
2 you get the TCO, it'll be \$52 million?

3 A Yes.

4 Q And then over time, as you spend some more money to get
5 tenants, it would be worth \$82 million. Is that correct?

6 A Once it's stabilized, yes.

7 Q Okay. Did you do any analysis to determine whether it
8 would be feasible, in view of the current market, to convert
9 some of the floors of the building to residential?

10 A I did not.

11 Q Have you ever been asked to do something like that?

12 A Yes.

13 Q But you weren't asked to do that here?

14 A Correct.

15 Q But go back to my other question. Sitting here today,
16 you don't believe the property is declining in value between
17 now and a year from now, do you?

18 A It's not anticipated, no, based on today's knowledge of
19 the market.

20 Q Okay, okay. When you're considering the value based
21 upon the income approach, you use the discounted cash flow
22 method, right?

23 A Yes.

24 Q Okay. Would -- if an end -- if an end user potentially
25 wanted to buy the building to use the whole building, would

1 that change your potential valuation?

2 A If there was a user in the market, they might pay
3 something different than what an investor would pay?

4 Q And you looking at it strictly from a -- an investor's
5 standpoint, right?

6 A Yes, for a reason.

7 Q Okay. Okay. Oh, you -- I don't see it. Oh, yeah, now
8 -- okay. Somehow you were bigger in my box, and now you're
9 smaller. Okay, no problem. So I have another question for
10 you. If you were the owner of this building, in this
11 current market, what would you do with it?

12 A What would I do with it? I --

13 Q No, would you sell it now? Would you put the money
14 into it to fix it up and hold it for a few years? What do
15 you think was the most prudent thing to do in this
16 environment?

17 A I don't know the circumstances surrounding the
18 property. The appraisal assumes, the property is exposed to
19 the market in today's condition, what would a typical buyer
20 pay for it? And I think all our data shows like, you had
21 eight sales. They're all investment sales. There was no
22 user sale. A user may pay a premium for it, depending on
23 the motivation of the user, but we had no user sales out
24 there.

25 So what would I do with the property? I think -- I'm

1 putting myself in the shoes of a typical buyer. Typical
2 buyer would anticipate completing construction, building out
3 the space, leasing up the building.

4 Q When you say "typical buyer" -- but let's say you were
5 the owner. Is that what you would do? You own it. I'm
6 putting you in the shoes of the owner. You're -- it's a
7 hypothetical question. You're an expert. What -- what do
8 you think is the best thing to do with this property right
9 now?

10 A I wouldn't have gotten involved in it in the first
11 place.

12 Q Okay. All right, well, hindsight's 20/20, as we all
13 know. But I'm asking you, you know, kind of in all
14 seriousness, right now, in the current environment we're in,
15 considering the building, I know you haven't seen the build
16 -- have you seen the building?

17 A I -- I've been by the building.

18 Q Okay, but you've never been inside it?

19 A I haven't been -- I haven't been inside.

20 Q You don't know the level of the finishes, the quality
21 of construction. You don't know any of that, correct?

22 A We have photographs that are in the report that were
23 provided by the client.

24 Q Okay, did you form an opinion based on those
25 photographs as to the level of the quality of the

1 construction, the renovation?

2 A Yes.

3 Q And what -- what's your opinion?

4 A I think if we go to the physical description, it's --
5 it -- you know, it's a renovated building. It's an old
6 industrial building that's being renovated into a good
7 quality office space property, but it's not built out yet to
8 tenant specifications.

9 Q All right, but is that customary to -- when you
10 renovate a building to not build it out with tenant
11 specifications because you don't know exactly what kind of
12 tenants you're going to have?

13 A Not necessarily. I mean, you build out to class A
14 quality office space. You could do pre-builds and it'll be
15 acceptable to most tenants in the market.

16 MR. MARKOWITZ: Okay, I have no other cross-
17 examination questions.

18 THE COURT: Okay.

19 All right, Mr. Cirz, I have one or two questions
20 for you. Let me just find the right piece of paper here,
21 page here, in your second report. Okay, so I'm looking at
22 your -- I believe it's on your page, Page 100 of the Exhibit
23 2. That's the -- I guess the cash flow analysis, the income
24 capitalization approach.

25 THE WITNESS: Okay, just a minute. I believe

1 that's 69 in my PDF.

2 THE COURT: On mine, it's a 105 of a 147, unless
3 I'm looking at the wrong page.

4 THE WITNESS: Okay.

5 THE COURT: In the second document. Oh, this is -
6 - sorry, this is the stabilized approach, sorry. Let me
7 find the -- I had a question for you about the other.
8 Sorry, give me one second here. I think I'm not on the
9 right page. Okay, this is -- whoops, this (indiscernible).
10 I just have to find your other cash flow for a second. Just
11 give me one more second here. The first one to compare this
12 to -- just a second. There we go again.

13 Okay, so on Page 101 of '47, this is the June 1st,
14 2023, the as-is. So my question for you here was, I guess,
15 the net cash flow amounts that you have in here -- I think
16 this is following up on a question Mr. Markowitz had asked
17 you -- this obviously takes into account cost of the
18 building and maintaining it in year one, for example, which
19 as you pointed out, you have no tenants, so less cleaning
20 and all those things. But it's also got capital expenditure
21 amounts here. I think it's a little over \$2.5 million, if
22 my reading is correct, \$2,553,629 in year one for capital
23 expenditures. Is that -- does that assume -- you know, what
24 does that assume, I guess, is my question.

25 THE WITNESS: Yeah, we were provided with a

1 capital budget, and in the capital budget was like, the
2 total construction cost, like what it was going to take to
3 renovate the building, and that was the amount in our data
4 that we had that showed what was not spent yet, so we're --
5 you know, based on information we're provided by the client,
6 there were still approximately \$2.5 million of capital
7 expenditures that needed to be incurred.

8 THE COURT: Okay, all right. And is that -- and
9 does that include the cost then for the tenant improvements
10 that you mentioned to build out the tenant space?

11 THE WITNESS: It does not, Your Honor. Those
12 costs occur a few lines higher. It says "tenant
13 improvements."

14 THE COURT: Right, that's what I thought.

15 THE WITNESS: And you can -- yep, and so that's
16 occurring in year two and three, when we're anticipating
17 that tenants start taking space.

18 THE COURT: Okay, understood, okay. I understand.
19 Okay, all right, give me one second here. All right, I
20 think that answers my questions. Thank you.

21 THE WITNESS: You're welcome.

22 THE COURT: Anyone else have any questions for the
23 witness?

24 MR. SELBST: I -- Your Honor, I do.

25 THE COURT: Okay, Mr. Selbst.

1 CROSS-EXAMINATION OF RAYMOND CIRZ

2 BY MR. SELBST:

3 Q Good morning, Mr. Cirz. My name is Stephen Selbst. I
4 represent G4, which is the mortgage lender on this property.
5 In your direct testimony, you talked about the impact of
6 rising interest rates in the last year. Now, I'm going to
7 pose another hypothetical to you, as Mr. Markowitz did. If
8 interest rates continue to rise, would that have a negative
9 impact on the value of the property, in your opinion?

10 A If interest rates continue to rise, I think it's going
11 to have a negative impact on commercial real estate in
12 general, so the property would be included.

13 Q Okay, so in other words, if interest rates rose, and
14 the value of the property declined, that risk would be born
15 by the -- by all the parties in the case, correct?

16 A I couldn't hear the first part of your question.

17 Q I'm sorry. I'm sorry, the -- I apologize. I'm moving
18 the mic closer to my -- to me. So if the interest rate
19 rose, and the property were diminished in value over the
20 next year, then that risk would be born by everybody in the
21 case, correct?

22 A Yes.

23 Q Okay. And I want to direct your attention to something
24 that you briefly talked about in your direct testimony. You
25 talked about the -- the vacancy rate in the Chelsea

1 submarket. What is the current availability of both prime
2 space and subleased space in the Chelsea submarket?

3 A It's in my report, and it might take me a minute to
4 find it. I think it was 18.8 percent, but if you give me a
5 minute --

6 THE COURT: You may go ahead -- please go ahead
7 and look, Mr. Cirz.

8 THE WITNESS: Unfortunately, we have too much
9 information in my reports.

10 MR. SELBST: Actually, Mr. Cirz, it's Stephen
11 Selbst for G4. I thought your report was extremely
12 informative, particularly the analysis of the leasing
13 submarkets.

14 THE WITNESS: Okay, so I'm at the beginning of the
15 market overview. I'll find it.

16 MR. SELBST: I think Page 86 or Page 91 of 147,
17 it's your conclusion of the Chelsea office submarket
18 analysis that's (indiscernible).

19 THE WITNESS: Page -- yeah, Page 56, I can see --

20 MR. SELBST: Correct.

21 THE WITNESS: -- yeah, my numbers were a little
22 bit off, but if we get to Page 56 of the PDF, the Chelsea
23 market vacancy as of the first quarter of 2023 is 18.2
24 percent. Midtown overall -- Midtown South overall is 18.8.
25 So you can see how dramatically the increase in vacancy

1 occurred in the last year. It went from 9.2 percent to 18.2
2 percent.

3 BY MR. SELBST:

4 Q So wouldn't you -- wouldn't that lead one to conclude
5 that in fact that anybody's who's renting space as an owner
6 or landlord will be fighting with tenant -- fighting for
7 tenants with the rest of the market? Is that correct?

8 A Well, sure.

9 Q Okay, and just following up on the other point, doesn't
10 your report also say that there's actually been negative
11 absorption of class A office space in Manhattan for the last
12 eight years?

13 A It may -- I'm not sure if I can find that in the
14 report, but --

15 Q I'm sorry, I did not note the page. I'll represent to
16 you that that's in there. And you do have general knowledge
17 of the market. There's been a fair amount of space that's
18 come onto the Manhattan market in the last few years. Isn't
19 that correct?

20 A Yes.

21 Q Okay, and would you agree with me that the -- well,
22 never mind. I'm going to withdraw that question.

23 MR. SELBST: I don't think I have any further
24 questions. Thank you, Your Honor.

25 THE COURT: Okay.

1 Does anyone else have any further questions for
2 Mr. Cirz?

3 Okay, Mr. Bauer, any redirect?

4 MR. BAUER: Yes, Your Honor, real quick.

5 RE-DIRECT EXAMINATION OF RAYMOND CIRZ

6 BY MR. BAUER:

7 Q Mr. Cirz, I'd turn you to Page 6 of your report, the
8 corrected report. And I point you to Paragraph 13.

9 A Okay, I'm there.

10 Q Okay, who's Doug Larson and Charles Looney?

11 A They're both appraisers with Newmark, both very
12 experienced. Doug runs the office valuation team.

13 Q Okay, and both of these gentlemen's CVs are included in
14 this -- in the Newmark appraisal. Is that correct?

15 A Yes.

16 Q And you reported to both of them with respect to this
17 Newmark appraisal, this appraisal?

18 A Could you say that again?

19 Q You spoke to both of them with respect to this
20 appraisal?

21 A Yes.

22 Q Okay, and it states in the 13 that both of them
23 inspected the exterior of the property?

24 A Correct.

25 Q Mr. Markowitz asked you a question about buildout costs

1 and -- that our appraisal -- or I should say the Newmark
2 appraisal at \$120 a square foot, and then if it were reduced
3 to \$100 a square foot, that it would change the value. Do
4 you recall him asking you that question?

5 A Yes.

6 Q Why did you choose -- why did -- where did your \$120
7 per square foot amount come from for the buildout?

8 A Well, that's our estimate of market, and that's based
9 on leasing activity. We have sale -- or leases that support
10 that. We talked to our brokers. We appraise, again, over
11 100 office buildings a year. There's even information in my
12 report, I think, that helps support that as well. I'm just
13 looking for it. Under -- I don't know why, but my cursor's
14 not working right now. There it goes. If you go to Page
15 48, I think that this was talking about the overall market
16 in Manhattan, and there's a chart in here about tenant
17 installation allowances. My PDF's not cooperating with me.
18 I've got to hold my cursor down in order to keep the page.
19 Did I give you a page number? I --

20 Q Yeah, you did.

21 A -- every time I go to --

22 Q You gave me Page 48.

23 A Okay. Like, every time I go to look for a page number,
24 it switches to the next page. So on Page 48, is there a
25 chart there on the lefthand side that says "tenant

1 installation allowances?"

2 Q It actually says -- what I'm looking at says
3 "concessions allowance -- analysis."

4 A Okay, concession allowances, oh, but it says -- so
5 tenant work allowances --

6 Q Yep.

7 A -- went up 33 percent, and on the lefthand axis, you'll
8 see what typical work allowances are, and it's like getting
9 close to \$140 a square foot. So that's midtown. So we're
10 in Midtown South, and what's the work allowance there? It's
11 just over \$130 per square foot. So if you were to offer
12 something significantly less, let's say, \$100 a square foot,
13 you're not going to get the same rent. You know, your
14 tenant's going to want some kind of discount because they're
15 not getting their full amount of buildout.

16 Q And is it fair to say, based on this analysis, that
17 work allowances are increasing and -- per square foot as
18 time passes?

19 A Yeah, the chart shows you that, yes.

20 MR. BAUER: Your Honor, I have no further
21 questions of Mr. Cirz.

22 THE COURT: Okay.

23 Any re-cross, Mr. Markowitz?

24 MR. MARKOWITZ: Only one question.

25 THE COURT: Okay.

1 RE-CROSS EXAMINATION OF RAYMOND CIRZ

2 BY MR. MARKOWITZ:

3 Q Mr. Cirz, did any of the appraisers from your Newmark
4 go inside the building and look around the building, look at
5 the quality of the construction, look at what was put into
6 the building and things of that nature? Or was it all just
7 exterior view?

8 A Correct.

9 MR. MARKOWITZ: Okay, I have no other questions.

10 THE COURT: Okay, all right, thank you very much,
11 Mr. Cirz, for coming today, and I appreciate it. And you --
12 I appreciate you coming to testify, and you can step down,
13 which I guess means you can either leave or turn off your
14 camera as Mr. Bauer sees fit.

15 THE WITNESS: Okay, all right, thank you, Your
16 Honor.

17 (Witness excused).

18 THE COURT: All right.

19 Okay, Mr. Bauer, do you have any other witnesses
20 you're intending on calling?

21 MR. BAUER: Yeah, I was intending on calling Mr.
22 Silverberg, but I'm not seeing him on the screen --

23 THE COURT: Yeah, I'm not, either.

24 MR. BAUER: -- to admit his declaration and just
25 to free him up for cross.

1 THE COURT: Yes.

2 MR. BAUER: But I'm not seeing him. I see
3 (indiscernible) --

4 THE COURT: Do you need to take a break to reach
5 out to him?

6 MR. BAUER: Yes, if I may, that would be great.

7 THE COURT: Okay, how long a break would you like?

8 MR. BAUER: Mr. Belinsky is from his office and
9 happens to be on and has been. And I know Mr. Silverberg's
10 still in Israel, so if you can give me -- it's 25 after 11.
11 I guess maybe I can report back in 20 minutes. That'll take
12 us to (indiscernible) 12 --

13 THE COURT: It -- that'll be helpful. That's
14 fine. Okay, so we'll adjourn for 20 minutes and go back on
15 the record at 11:45. Just to remind everybody, obviously,
16 that -- we still have -- even when recording stops, there's
17 still voice, so you might want to turn off your camera and
18 put yourself on mute if you're intending on talking. Thank
19 you.

20 MR. BAUER: Thank you, Your Honor.

21 (A brief recess was called.)

22 THE COURT: Okay, we're back on the record. I
23 don't see Mr. Bauer yet. Hi, Mr. Bauer.

24 MR. BAUER: Hi, I'm back, Your Honor.

25 THE COURT: Okay.

1 MR. BAUER: I am still not -- I know that -- I saw
2 Mr. Belinsky reach out to Mr. Silverberg, but I'm not seeing
3 Mr. Silverberg appearing on the screen. I know that he can
4 only dial in.

5 THE COURT: What does that mean? Sorry.

6 MR. BAUER: He has no access to Zoom, much like
7 the last time, and I believe he's trying to dial into this
8 Zoom call, but I'm not seeing --

9 THE COURT: Mmm.

10 MR. BAUER: -- his number appearing.

11 THE COURT: All right.

12 MR. BAUER: I've sent a text to Mr. Belinsky.
13 He's dialing in now is what I'm getting back.

14 THE COURT: All right.

15 MR. BAUER: I believe I see a number in the lower
16 righthand corner of my screen, which is Mr. Silverberg's
17 cell phone number, so I believe he is on.

18 MR. SILVERBERG: That's me. I'm here.

19 THE COURT: All right. All right, Mr. Silverberg,
20 I guess I have to ask you some questions that aren't as
21 easy. What do you have in front of you?

22 MR. SILVERBERG: Just my cell phone.

23 THE COURT: Okay, any documents with you?

24 MR. SILVERBERG: No, none.

25 THE COURT: Okay. Anyone in the room with you?

1 MR. SILVERBERG: I'm actually outdoors, but
2 there's nobody around me.

3 THE COURT: Okay, outdoors, okay. It's
4 surprisingly quiet for outdoors. At least here it wouldn't
5 be quiet.

6 MR. SILVERBERG: Huh.

7 THE COURT: Okay, all right, Mr. Silverberg, I'm
8 going to -- I would normally be asking you to raise your
9 right hand, so I guess I'm asking you to do it even though I
10 can't see you. So I'm going to ask you --

11 MR. SILVERBERG: (Indiscernible).

12 THE COURT: -- to -- you're placed under oath. Do
13 you swear to tell the truth, the whole truth, and nothing
14 but the truth?

15 MR. SILVERBERG: Yes.

16 MR. BAUER: Great. I may proceed, Your Honor?

17 THE COURT: Yes.

18 MR. BAUER: Thank you.

19 DIRECT EXAMINATION OF ERAN SILVERBERG

20 BY MR. BAUER:

21 Q Mr. Silverberg, this is Mo Bauer, S -- your counsel,
22 SME's counsel. This is the motion for stay relief that SME
23 filed. On May 22, 2023, we submitted on your behalf a
24 declaration of Eran Silverberg on behalf of 541 W 21 SME,
25 LLC in support of supplement to motion of 541 W 21 SME, LLC

1 for an order terminating the automatic stay pursuant to 11
2 USC Section 362 and other related relief. Are you familiar
3 with this document?

4 A Yes, I am.

5 Q And did you execute this document?

6 A Yes, I did.

7 Q And if you were to testify -- or strike that. Is this
8 document representative of your testimony that would be
9 given today if direct examination were to proceed?

10 A It is. Yes.

11 Q And I note that this declaration sets forth paragraphs
12 that also reference your prior declaration submitted in
13 opposition to a motion filed by the Debtors to reject the
14 agreements with Higher Ground and the agreement with
15 Cauldwell, as well as in opposition to the Debtor's motion
16 to retain Irving Oak and (indiscernible). Does this
17 declaration, and is it your testimony, include the items set
18 forth in that prior declaration?

19 A Yes, it does.

20 Q Mr. Silverberg, I noted as part of the motion and your
21 declaration, they reference a series of loan documents
22 entered -- executed by the Debtor's representative, Erno
23 Bodek, in favor of SME, which documents -- loan documents
24 were dated November 19, 2021 and include a mezzanine loan
25 agreement, membership interest, pledge and security

1 agreement, joint and consent of the issuer, mezzanine loan
2 note, non-recourse carve-out guarantee, guarantee of
3 completion, and carry guarantee. Are you familiar with
4 these documents?

5 A Yes, I am. All of them.

6 Q And these are the loan documents that were executed by
7 the Debtors in favor of SME?

8 A Yes, they are. That's correct.

9 Q And these are the documents in which SME relied on in
10 asserting a claim against the Debtors?

11 A Yes.

12 Q Okay. I note that there is also a first amendment to
13 mezzanine loan agreement dated June 28, 2022. Did SME enter
14 into a loan amendment with the Debtors?

15 A Yes, we did.

16 Q Okay. And did there come a time in which SME issued a
17 default letter to the Debtors?

18 A Yes, we did.

19 Q And was it -- was there a letter issued dated October
20 13, 2022?

21 A Yes, there was.

22 Q And was that default letter in part based on a default
23 letter issued by G4 to the Debtors?

24 A Yes, in part.

25 Q Okay. And the -- and the SME loan, is that secured by

1 a pledge of interest of KOVA?

2 A It was, yes, 100 percent pledged to the membership
3 interest.

4 Q Okay. And did -- and to your knowledge, did they --
5 did SME record a UCC financing statement as evidence of the
6 pledge of the interest?

7 A We did. Yes.

8 Q Did SME file a proof of claim in the -- in these
9 Chapter 11 cases?

10 A We did. Yes.

11 Q And they filed a proof of claim against each of the
12 Debtors?

13 A Yes, we did.

14 Q And you executed the proof of claim on -- each of those
15 proof of claims on behalf of the Debtors?

16 A Yes.

17 Q And those proofs of claims set for the dollar amount
18 you believe was due and owing to SME as of the petition
19 date?

20 A Yes, that's correct.

21 Q And is SME -- has SME been paying G4 each month?

22 A We have. Yes.

23 Q And approximately how much per month is -- is being
24 paid to G4?

25 A Approximately \$400,000 in advance on a -- on a, you

1 know, three to four-month cycle, potentially even more.

2 Q Has -- is it your understanding that Erno Bodek is the
3 managing member of each of the Debtors?

4 A That's my understanding. Yes, that's correct.

5 Q Have you had any conversations with Erno Bodek in the
6 past month regarding this case -- these cases?

7 A I have -- I have not. No, I haven't had a conversation
8 with him since before the -- the petition to file.

9 Q And as you understand, there was a meeting on Friday,
10 June 2nd, at Ms. Zourigui's offices. Were you in attendance
11 at that meeting?

12 A I was via -- via teleconference.

13 Q Okay. Did Erno Bodek attend that meeting?

14 A He did not attend that meeting nor any other settlement
15 meeting that the court suggested.

16 MR. BAUER: Your Honor, I'd like to move into
17 evidence items -- the three proofs of claims that were filed
18 by SME, which are Claim No. 17 -- claim number -- in the
19 Erbo case, Claim No. 2 in the KOVA case, Claim No. 2 in the
20 Gold Mezz case.

21 THE COURT: I'm going to stop there for a second.
22 Let's not do this -- we're going to do this in bits.

23 MR. BAUER: Okay.

24 THE COURT: Mr. Markowitz, do you have any
25 objection to moving in the three proofs of claim filed by

1 SME against each of the Debtors?

2 MR. MARKOWITZ: No, Your Honor.

3 THE COURT: Okay. So, those are admitted into
4 evidence. Those are Documents No. 19, 20, and 21, my
5 binder.

6 (Documents 19 to 21 entered into evidence.)

7 MR. BAUER: And then the next series of documents,
8 Your Honor, we'll gladly take them one by one, but they're
9 Items 22 through 29, which are the mezzanine loan agreement,
10 the first amendment to the mezzanine loan agreement, the
11 membership interest pledge and security agreement, the joint
12 -- joinder and consent of the issuer, mezzanine loan note,
13 the non-recourse carve-out guarantee, the guarantee of
14 completion, and the carry guarantee. I'd like to move those
15 into evidence, which are essentially the loan documents with
16 SME.

17 THE COURT: Okay. Mr. Markowitz, do you have any
18 objection to those --

19 MR. MARKOWITZ: No, Your Honor.

20 THE COURT: -- documents (indiscernible). Okay.
21 All right. So, Documents No. 22 through 29 are admitted
22 into evidence.

23 (Documents 22 to 29 entered into evidence.)

24 MR. BAUER: Your Honor, we'd like to move Document
25 31 into evidence, which is the UCC financing statement that

1 was filed with I believe New York state.

2 THE COURT: Mr. Markowitz, any objection to --

3 MR. MARKOWITZ: No, Your Honor.

4 THE COURT: Okay.

5 MR. BAUER: And then I'd like to move No. 30 into
6 evidence, which is the default letter issued by SME, which
7 included as Exhibit A the default letter issued by G4.

8 THE COURT: Okay. Any objections to admission of
9 the default letter?

10 MR. MARKOWITZ: No.

11 THE COURT: So, Exhibits 30 and 31 are admitted
12 into evidence.

13 (Exhibits 30 and 31 entered into evidence.)

14 MR. BAUER: Great. Thank you, Your Honor.

15 Your Honor, I can turn the witness over for cross-
16 examination.

17 THE COURT: All right. Mr. Markowitz, any cross-
18 examination?

19 MR. MARKOWITZ: Yeah, I do, Your Honor.

20 CROSS-EXAMINATION OF ERAN SILVERBERG

21 BY MR. MARKOWITZ:

22 Q Mr. Silverberg, Scott Markowitz. Good evening. I
23 guess it's evening there or getting close to it or
24 afternoon. I represent ERBO, as you know. I'm going to
25 have a few questions for you. My first question is you

1 filed a proof of -- you filed proof of claim against ERBO.

2 Did SME make a loan to ERBO?

3 THE COURT: Mr. Silverberg, can you hear the
4 question?

5 BY MR. MARKOWITZ:

6 A We did not directly make a loan to ERBO, no.

7 Q And your proof of claim asserts an amount of
8 approximately 7,582,000 as of the filing date, correct? The
9 petition date, February 13, 2023, right?

10 A That's right.

11 Q And the original amount of your loan was 4,500,000 that
12 was made to Gold Mezz, correct?

13 A It was actually -- no, that's incorrect. It was
14 4,750,000.

15 Q Okay. And so, why is the principal balance only 4
16 million 533 in your proof of claim?

17 A Because that's the amount that we advanced under the
18 \$4.75 million facility.

19 Q Oh, so you haven't advanced the full amount of the
20 loan?

21 A The balance of the payments were protective advances
22 under the loan documents.

23 Q Okay. When you say protective --

24 A So, they're not --

25 Q I'm sorry, go ahead.

1 A It's -- they're not -- it's not classified -- the
2 limited scope of dollars advanced as principal is that 4.3 -
3 - sorry, 4.5 and change million dollar number, and the
4 balance are protective advances that are -- you know, that
5 we made as of right based on the loan documents.

6 Q When you say based upon the loan documents, are the
7 protective advances, are those payments to G4, the first
8 mortgage holder on the real property?

9 A Amongst other things, yes.

10 Q How much money have you paid G4?

11 A I mean, I can tell you exactly if you want to hang on a
12 -- I don't know. I mean, pre-petition or post-petition?

13 Q Oh, let's separate it out. Let's separate it out.
14 Pre-petition, how much?

15 A Okay. One --

16 MR. BAUER: Mr. Silverberg, you can't be checking
17 any of your information if you have access to it. You can
18 only go with what you know when you're asked the question
19 off the top of your head.

20 BY MR. MARKOWITZ:

21 A Okay. Well, I -- I can't give you an exact number then
22 off the top of my head because it's --

23 Q Give me a rough number.

24 A -- millions upon -- it's millions upon millions of
25 dollars. So, after we advanced the initial 2.75 million,

1 the loan amendment that Mr. Bauer had previously mentioned,
2 that allowed us to advance more money under the facility to
3 replenish the interest reserve that's being held by G4. So,
4 just there, we advanced an additional, you know, million
5 five. That's before the default, and after the default I
6 want to say we advanced another \$5 million give or take.

7 Q Okay. I don't -- I don't really understand the
8 numbers. Let's see if we could parse into that. You
9 testified that --

10 A Okay. We initially -- we closed and we disbursed to
11 the borrower \$2.75 million, okay? The balance of the \$2
12 million facility was supposed to be used for tenant
13 improvement costs right after -- after the borrower was able
14 to procure leases for the property in excess of \$85 per
15 square foot per floor, and that's what that \$2 million
16 allocation was originally designated for.

17 However, the borrower, you know, back at -- at
18 this point had -- you know, needed to carry the loan
19 further. They needed to replenish the interest reserve.
20 They needed to pay the G4 extension fees, amongst other
21 costs, because they didn't want to be in default. So, they
22 asked me if I'd be willing to reallocate the \$2 million
23 towards the -- towards the hard -- the tenant improvement
24 cost to replenish their interest reserve and extend their
25 loan -- their senior loan with G4, and I agreed to do so.

1 So, the million five, right, in connection with
2 the loan amendment -- in connection with the loan amendment
3 was disbursed to replenish the G4 interest reserve, and I
4 believe at the time it gave them an additional six months.

5 Q But that's included in the 4 million 5 number, right?

6 A That is included in the 4 million 5. Yes, that's
7 right. But -- but after that -- after the default, we paid
8 G4 another let's call it, you know, in excess of \$5 million.

9 Q But why does protective advances only say 2.5 million
10 on your proof of claim if you paid them five million? I'm -
11 - it's a big spread. I'm trying to understand.

12 A Because they --

13 Q How much (indiscernible)?

14 A -- that was when -- that was when we filed the proof of
15 claim. After the proof of claim, we paid them another few
16 million dollars, which takes us to in excess of \$10 million
17 today.

18 Q So, how much money are you paying to G4 every month?

19 A About four -- I'm not paying it monthly. If you
20 listened more carefully, I mentioned that I'm paying it
21 incrementally in advance in three to four-month installments
22 ahead of time before the payments are due. So, today that -
23 - that number that I mentioned in excess of \$10 million pays
24 G4 through -- through, I don't know, the end of the third
25 quarter of 2023.

1 Q Okay. So, do you have an agreement with G4 to extend
2 their loan if you get control of the -- of the Debtor?

3 A I don't. No, I don't.

4 Q Okay. Is there an inter-creditor agreement between you
5 and G4?

6 A There is. Yes.

7 Q And does the inter-creditor agreement require you to
8 make payments to them?

9 A Yes.

10 Q And does -- and did you see the valuation of the
11 property that you're -- that you put into evidence today
12 that valued the real property at 48 -- 49 million as of
13 today?

14 A I did. Yes.

15 Q Do you think that's the right value as of today?

16 A As of today, if there is a buyer, that's what they
17 would pay for the property. However, I'm not -- I'm unsure
18 of whether or not there's actually a buyer for the property
19 today. And therefore, I can't tell you what the liquidated
20 value today would be.

21 Q So, why -- if the property is only worth \$48 million
22 and you're owed -- now you say you're owed eight or \$9
23 million, why are you -- why are you still -- why are you
24 paying the senior lender every month? Aren't you risking
25 that money? Isn't it like an unsecured lien?

1 A Because -- I'm not going to write off the \$5 million,
2 right? I can -- I can assess, you know, as a -- as a
3 sophisticated real estate investor that, you know, if I do
4 spend the money to complete the property, to carry the debt
5 service throughout the time that I'm able to stabilize the
6 property and lease the entire property, I believe it'll be
7 worth at least, you know, the money that I put in, and I've
8 assessed that analysis time and time again.

9 Q Are you factoring in that you're going to pay G4 at the
10 non-default rate, correct? Not the default rate under their
11 loan, right?

12 A That's correct.

13 Q Did you have any discussion --

14 A That's (indiscernible) I'm paying them on time every --
15 I'm paying them on time every month.

16 Q But the loans mature, right? So, they would be
17 entitled to assert the default rate arguably?

18 A Arguably. Yes.

19 Q But you have an agreement with them, some sort of
20 gentleman's agreement that you're just going to pay them the
21 contract rate?

22 A No, it's not a gentleman's agreement. It's an
23 agreement in writing.

24 Q I asked you earlier. You said you didn't have an
25 agreement. So, there is an agreement in writing?

1 A You didn't ask me that. You didn't ask me that. You
2 asked me if I had an agreement with G4 to continue paying
3 them, and you asked me then if in the inter-creditor I'm
4 required to pay them on time to avoid any default interest,
5 right?

6 Q Okay. So I just want to make sure. I'm not trying --

7 A There's no aha moment. We had an inter-creditor from
8 November of 2021. So, let's not -- let's not get things
9 confused here.

10 Q I know. I don't want to get things confused. I just
11 want to understand.

12 A Then don't, because you asked me if I had an ICA with
13 G4 and I answered yes.

14 Q Okay.

15 A So, that's my agreement in writing with G4.

16 Q So, you have an agreement in writing with G4. I just
17 want to understand this. So, you --

18 A Correct. That's called an ICA.

19 Q If I understand it, that if you pay them the non-
20 default interest under their loan, which is approximately,
21 what, 9 percent right now?

22 A It's not an indefinite agreement to continuously pay
23 them for the next 10 years, okay?

24 Q Okay. Let me ask you another question. You said --

25 MR. BAUER: Your Honor -- Your Honor, I'm going to

1 object. I mean, I gave Mr. Markowitz latitude, but this is
2 our --

3 THE COURT: Hold on.

4 MR. BAUER: -- this is our stay relief motion
5 regarding, one, whether there's equity in the property,
6 which we put our appraiser on to show that there's not, and
7 then the second part of the stay relief motion is cause for
8 stay relief and the feasibility of the plan that they have -
9 - that they, being the Debtors, have proposed. It has
10 nothing to do with this hearing. It has nothing to do with
11 the deal that Mr. Silverberg may have with G4, and I see Mr.
12 Selbst would like to chime in.

13 MR. SELBST: I was -- I was also -- excuse me,
14 Stephen Selbst, Herrick Feinstein for G4. I was also being
15 deferential to Mr. -- to Mr. Markowitz, but the issue of the
16 payments made by SME to G4, I agree with Mr. Bauer that
17 they're simply not germane to this hearing and I object to
18 the continuing line of question respectfully.

19 THE COURT: All right. I note, Mr. Bauer, that
20 you do raise in your pleadings the fact that there -- you
21 know, there are -- there's issues about adequate protection.
22 If you're not going to -- if you want me not to consider the
23 fact that there's payments being made by your client at all
24 to Mr. Selbst in my analysis, that's fine. I'm happy to not
25 -- to allow this to not go on, but I just note it is part of

1 your cause argument.

2 THE WITNESS: I think it's -- I think it's
3 actually important to hear out Mr. Markowitz and Mr. Bauer
4 and Mr. Selbst. I apologize, but I think the Court needs to
5 understand that there is no formal agreement in writing and
6 I'm continuously making these payments, right, and I'm
7 hoping that G4 just doesn't decide to, you know, go forward
8 and wipe out my position, right? So, I think that's
9 extremely relevant to the motion that's being heard today.

10 THE COURT: All right. Well, Mr. Bauer, I'm going
11 to let Mr. Markowitz keep asking his questions then, because
12 your own client has now said it's relevant. So --

13 MR. MARKOWITZ: Okay, I only -- I only have a few
14 more questions honestly, Your Honor.

15 THE COURT: All right.

16 MR. MARKOWITZ: Okay.

17 BY MR. MARKOWITZ:

18 Q Mr. Silverberg, you say in your -- you stay in your
19 declaration, I wanted to read from it, it's in Paragraph 7,
20 it says SME has the funds to prepare and execute a strategy
21 to successfully progress the instant proceedings towards the
22 end beneficial not only to SME but other creditors as well.
23 And then it says specifically should the requested relief be
24 granted -- be granted, SME intends to propose to proceed to
25 fund completion of the project, obtain a TCO, seek tenants

1 for the property, provide necessary tenant fit-up funds,
2 negotiate a plan of reorganization with all creditors
3 including payment of all our claims, and sell the project to
4 pay the senior lender -- lender and recover the full amount
5 of monies SME loaned prior to the petition date and/or pay
6 future loans. Is that -- is that -- is that your testament?
7 That's what you intend to do if you get control of the
8 Debtor?

9 A That's what I intend to do, yes.

10 Q You intend to put in a reorganization plan, correct?

11 A That's right.

12 Q And will your --

13 A A peaceable reorganization plan.

14 Q -- reorganization -- and will -- and will your
15 reorganization plan provide -- strike that. Do you -- do
16 you have an estimate of when do you think you would -- the
17 optimum time to sell the building would be?

18 A I think maybe if we could have -- if we can loop in the
19 Federal Reserve to this conversation, perhaps that -- that
20 would assist me in my analysis. But I don't -- I don't have
21 an exact --

22 Q Fair enough.

23 A -- an exact timeline for you.

24 Q Okay. Let me -- let me ask in a different way. Do you
25 expect to sell it in the next year?

1 A No, I don't.

2 Q Do you expect to sell it in the next two years?

3 A I'd say it's approximately closer to 30 to 40 months.

4 Q Okay.

5 A We're not quite getting the audience to fulfill a
6 70,000 square foot office building at the moment.

7 Q No, we understand it's a challenging situation. That's
8 why we're in bankruptcy court. Generally, that's what
9 happens in bankruptcy court, challenging situations.

10 A Right.

11 Q So -- okay. And if you didn't pay G4 every month, do
12 you have an understanding of what G4 could do in view of the
13 Chapter 11 case?

14 A I do, yes.

15 Q What could G4 do if you -- they didn't get paid?

16 A I think they have an array of different options, but
17 the reason why I'm paying them is to maintain my position
18 and not to just write off \$10 million plus.

19 MR. MARKOWITZ: Okay. I have no other questions,
20 Your Honor.

21 THE COURT: All right. Anyone else have any
22 questions for Mr. Silverberg? All right.

23 Mr. Silverberg, I just have really one question
24 for you.

25 THE WITNESS: Absolutely.

1 THE COURT: I guess -- I guess my question for you
2 is you mentioned that you have the funds for completing
3 this, and I presume you understand and have taken into
4 account the fact that that would mean, first of all, funding
5 the cost to complete the, you know, the TCO, the work to get
6 the TCO that we've been having discussion in these other
7 motions about, right?

8 THE WITNESS: Absolutely. Yes.

9 THE COURT: Okay. And then --

10 THE WITNESS: First and foremost.

11 THE COURT: Right. And then obviously, there'd
12 also be the process of trying to go out to the market and
13 see about whether there was a possibility of leasing up the
14 space. So, there'd be work potentially, at least Mr. Cirz,
15 you know, was commenting on tenant improvement requirements
16 and then leasing agents, leasing costs relating to that.
17 You'd have those costs, right?

18 THE WITNESS: That's right. So, in connection
19 with, you know, attempting to lease the space, we've been --
20 we've been advised by I think, you know, a few of the top
21 tier leasing brokerages based in Manhattan that we should
22 build out the spaces to attract the tenants on a more
23 expeditious -- on a more expedient basis, I guess.

24 So, I fully understand the tenant improvement
25 costs associated with the entire building, and we've taken

1 into consideration having to pre-build the spaces as well to
2 attract the audience that we're looking for.

3 THE COURT: Okay. And then you'd also have to pay
4 the cost of carrying the building during that time, which I
5 think everybody acknowledges there would be other costs like
6 taxes, insurance, electricity, all the things that, you
7 know, would be normally out there for building regardless,
8 even before you had tenants. There'd be some of that.

9 THE WITNESS: Absolutely. And -- you know, in
10 addition to that, and I think, you know, one of the more
11 important factors is the G4 debt service to add to the real
12 estate taxes, insurance, you know, common utilities, and the
13 balance that you mentioned.

14 THE COURT: Yeah. Well, I was going to get to
15 that. Sorry, I hadn't gotten that far. I was just getting
16 to the basics first. So, in connection with that --

17 THE WITNESS: Absolutely.

18 THE COURT: -- obviously, if you were going to
19 propose a plan, you would have to come up with a plan that
20 either could be -- was acceptable to parties or could be
21 approved over objections, and that would presumably have to
22 deal with coming up with some kind of arrangement with G4
23 that was either acceptable to G4 or could be confirmed under
24 the Bankruptcy Code otherwise, right?

25 THE WITNESS: That's right. Yes.

1 THE COURT: Okay. And I presume that probably
2 you're assuming that that would probably involve some level
3 of cost that you'd have to expend relating to that, you
4 know, for some level of payments if you had a plan that was
5 confirmed, at least for some period of time before you could
6 sell the building, right?

7 THE WITNESS: That's right. Yes.

8 THE COURT: And then there are other creditors
9 that we're talking about. We have mechanics lien creditors,
10 taxing authorities, unsecured creditors that would
11 technically be ahead of you because of the fact that they're
12 at the property level, some of them.

13 THE WITNESS: At the ERBO level, right.

14 THE COURT: Yeah. Okay. And so, you understand
15 that all that would require additional cash. So, when
16 you've given this testimony, you're really saying that you
17 have the funds to accomplish all of that?

18 THE WITNESS: Yes, that's correct.

19 THE COURT: Okay. All right. That's my question.

20 THE WITNESS: Yes, we fully -- we've fully
21 analyzed on numerous occasions the cost to complete. And I
22 think most importantly, I have a committee that I -- that I
23 report to that essentially makes the investment decisions
24 for the fund, and I can only advise, and we've invested the
25 -- the 10-plus million dollars, you know, to a transaction

1 that we were -- that we committed \$4.7 million to, just
2 because we understand what it would cost to complete, and if
3 we did need to carry, you know, this project to the finish
4 line, you know, they -- they're in agreement and they did
5 invest -- there was multiple million dollars beyond, you
6 know, the initial -- the initial negotiated facility because
7 they understand what it'll take. And you know, we're fully
8 confident with our ability to, you know, to pay for
9 everything, maybe twice over.

10 THE COURT: Okay. Understood. All right. Thank
11 you for answering my questions.

12 All right. Mr. Bauer, any redirect?

13 THE WITNESS: Thank you.

14 MR. BAUER: I do not have any redirect, Your
15 Honor.

16 THE COURT: All right. Okay. Thank you, Mr.
17 Bauer. Before we leave Mr. Silverberg, I think what we
18 didn't do yet is that we -- I don't know that we actually
19 admitted his declaration into evidence. I don't recall
20 that.

21 MR. BAUER: Yes, Your Honor. I would like to --
22 we did not. I would like to admit his declaration, which is
23 Docket No. 90, into evidence if I may.

24 THE COURT: Okay. Any objection?

25 MR. MARKOWITZ: No objection, Your Honor.

1 THE COURT: Okay. All right. So, Mr.
2 Silverberg's decoration is admitted into evidence.

3 (Docket No. 90 entered into evidence.)

4 THE COURT: All right. Mr. Bauer, I'm -- Mr.
5 Silverberg, thank you for coming and being here today, and
6 obviously --

7 THE WITNESS: Absolutely. Thank you for having
8 me.

9 THE COURT: Okay. And I appreciate your
10 testimony, and you may -- as far as I'm concerned, you can
11 be excused, but that's up to Mr. Bauer.

12 MR. BAUER: It's up to Mr. Silverberg if he wants
13 to stay on and listen.

14 THE COURT: Okay. All right.

15 THE WITNESS: I'll await direction from Mr. Bauer.
16 If he needs anything further, I'm happy to be here.

17 MR. BAUER: Right. Well, let's see what -- I
18 mean, Your Honor, I have no other witnesses. I did have a
19 full-blown exhibit list and kind of like to go over and make
20 sure what's in evidence and what's not. I mean, some of the
21 things I think Your Honor can take some judicial notice of.

22 THE COURT: Sure.

23 MR. BAUER: Namely the three Chapter 11 petitions,
24 the three -- which are Items 3 through 5, the bankruptcy
25 schedules which are Items 6 through 8, the Statement of

1 Financial Affairs which are Items 9 through 11, the Debtor's
2 joint consolidated plan and joint disclosure statement,
3 which are items 12 to 13.

4 Speckled throughout this list are claims that were
5 filed by different parties, and I didn't list every -- I
6 didn't provide every claim on this list, but I did provide
7 G4's claim, Cauldwell Wingate's claim, the New York City
8 Department of Finance real estate tax claim. Those items
9 are 14, 16 and 17.

10 THE COURT: Why don't you stop there for a second
11 just so I ask Mr. Markowitz, is there any objection to my
12 admitting these into evidence? They're obviously in the
13 record.

14 MR. MARKOWITZ: No.

15 THE COURT: Okay. All right.

16 MR. BAUER: And I actually included, although it
17 ended up at the tail end of the list because I overlooked,
18 it was claim number -- Item No. 4, which is Claim No. 13 of
19 Higher Ground.

20 THE COURT: All right. So, those are all admitted
21 into evidence. So, for my record, that's -- sorry, just for
22 the record, that's Exhibits 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
23 13, 14, 16, 17 and then 40?

24 MR. BAUER: Correct.

25 THE COURT: Okay.

1 (Exhibits 3 through 14, 16, 17, and 40 entered
2 into evidence.)

3 MR. BAUER: Item 18 is the New York City
4 Department of Finance Notice of Property Value, property tax
5 bill, quarterly statements, invoices and payment history.
6 This was downloaded from the New York City Department of
7 Finance website. I think we can take judicial notice of it.
8 I'd like to have it admitted in evidence. It does show that
9 a tax bill was -- should be issued in June for the upcoming
10 year.

11 THE COURT: Okay. Any objection, Mr. Markowitz,
12 to --

13 MR. MARKOWITZ: No, Your Honor, (indiscernible).

14 THE COURT: All right. That's admitted into
15 evidence.

16 (Item 18 entered into evidence.)

17 MR. BAUER: Your Honor, Items No. 33, 34, 36, 37,
18 and 38 were e-mails between myself and Mr. Markowitz. The -
19 - 33 and 34 relate to my efforts to try taking the
20 depositions of the Bodeks in preparation for this hearing,
21 and items 36, 37, and 38 relate to the \$400,000 that was
22 paid to or was deposited with Mr. Markowitz's firm relating
23 to the construction, finalizing construction of the
24 building, the rejection motion, and the retention motion.

25 THE COURT: Okay. I guess Mr. Markowitz, I'd ask

1 if there was any objections to these.

2 MR. MARKOWITZ: No, I have no objection to anybody
3 putting in any of my e-mails in any case.

4 (Items 33, 34, and 36 to 38 entered into
5 evidence.)

6 MR. MARKOWITZ: I stand by them.

7 THE COURT: Okay. Good to know that.

8 MR. BAUER: Item 39 is an affidavit of an Unika
9 McClain, which was her efforts in trying to serve the Bodeks
10 with the subpoenas that we issued to the individuals.

11 MR. MARKOWITZ: I object to those because I don't
12 -- that's an affidavit of service without the process server
13 here, so I do object to those.

14 THE COURT: Okay.

15 MR. BAUER: You object to the affidavit of the --
16 of the process server?

17 MR. MARKOWITZ: Yeah, you need to bring -- produce
18 a process server just like any other affidavit.

19 THE COURT: I mean, he's right. You do need to
20 produce the process server if you want to put it in.

21 MR. BAUER: That's fine, Your Honor. Item 41 is
22 actually an Excel spreadsheet prepared by myself which
23 summarizes the claims as scheduled and the claims as filed.

24 MR. MARKOWITZ: I have no objection to that, Your
25 honor. I mean, our disclosure statement list the claims.

1 There's a claims register. There's a bar date. I don't --

2 I don't have an objection to it.

3 THE COURT: Okay. All right. So, that can be
4 admitted.

5 (Item 41 entered into evidence.)

6 THE COURT: Okay. I don't -- Mr. Bauer, I'm not
7 sure about what happened to my question for you about 35 and
8 15?

9 MR. BAUER: 35 are the transcripts from the three
10 attempted depositions of the Bodeks, because I did appear
11 and I put the -- I put statements on the records. Then it
12 reflects that they did not appear. So, I'd like to move
13 those into -- into evidence.

14 THE COURT: Any objection to that, Mr. --

15 MR. MARKOWITZ: No objection, Your Honor, although
16 again, we can argue about it as to why they didn't appear,
17 but that -- they didn't appear. That's a fact.

18 THE COURT: Okay.

19 (Item 35 entered into evidence.)

20 MR. BAUER: Item 15 is the e-mail from Mr. Selbst
21 to my associate, George Fitting, advising of what the per
22 diem interest is at the contract rate and at the default
23 rate with -- for the G4 loan.

24 THE COURT: Do you have any objections to that,
25 Mr. Markowitz?

1 MR. MARKOWITZ: No, I don't.

2 THE COURT: Mr. Selbst appears. I think he could
3 authenticate his own e-mail.

4 MR. MARKOWITZ: I have no objection to it, Your
5 Honor.

6 MR. SELBST: I can. Stephen Selbst, Your Honor.
7 I join Mr. Markowitz. My e-mails stand for themselves --
8 speak for themselves.

9 (Item 15 entered into evidence.)

10 MR. BAUER: And Item 32 I don't think I alluded
11 to, which was the e-mail from my partner to Mr. Markowitz
12 sending him the notices of deposition to the Debtors and the
13 subpoenas. I --

14 THE COURT: Okay. Any objection to admission of
15 that?

16 MR. MARKOWITZ: No. Nope.

17 THE COURT: All right.

18 (Item 31 entered into evidence.)

19 MR. BAUER: And then I think that's everything,
20 Your Honor.

21 THE COURT: It is. Okay. All right. Okay. All
22 right.

23 MR. BAUER: I rest.

24 THE COURT: I guess, Mr. Bauer, that's your
25 evidentiary record, right?

1 MR. BAUER: That's correct, Your Honor.

2 THE COURT: Okay. Mr. Markowitz, do you have
3 anything else that you want to add on the evidentiary record
4 side?

5 MR. MARKOWITZ: Not on the evidentiary record side
6 right now.

7 THE COURT: Okay. No, now.

8 MR. MARKOWITZ: No. No, not now.

9 THE COURT: Okay. All right. Okay.

10 All right. So, that's fine. Then I guess we're
11 going to move into argument with respect to the motion, and
12 obviously Mr. Bauer, you're going to go first.

13 MR. BAUER: Your Honor, we weighed out a lot of
14 the arguments in the written submission, so I'm not going to
15 be redundant. We heard the -- we heard the evidence.

16 First and foremost, we -- we've laid out what the
17 amount is of -- and remember, there's three entities here,
18 there's ERBO, there's KOVA, and there's Gold Mezz. We're a
19 creditor -- we, being SME, is a creditor of Gold Mezz with
20 the pledge of the KOVA assets, which KOVA has 100 percent.

21 So, obviously, if we're able -- if we obtained
22 stay relief, if SME obtained stay relief, it would have to
23 exercise its UCC rights to acquire the pledged assets of
24 KOVA, which would then give it control in -- of KOVA and
25 indirectly control of ERBO Properties which owns the subject

1 property.

2 We set forth the amount of the claim as of the
3 petition date, approximately \$7.5 million against Gold Mezz,
4 which has a pledge of the asset in KOVA. Neither -- with
5 that claim, neither KOVA nor Gold Mezz could confirm a
6 standalone plan of reorganization. The -- we have shared
7 with the court a filed UCC statement that shows that we're -
8 - we're perfected by the pledge of the interest, properly
9 perfected.

10 And then the question becomes does the Debtors
11 have a lack of equity, and what we have showed to the Court
12 -- and there's no other competing appraisal, competing
13 submission. Mr. Cirz testified and I think he's very
14 credible, presented a lot of in-depth information, and
15 today, as of this hearing, the value of the property that
16 Mr. Cirz opined is \$49 million.

17 The claims against the ERBO Debtor, which all
18 would have to be satisfied before KOVA received any money,
19 aggregate per the claims analysis that we submitted in our
20 exhibit, the total claims aggregate is 63 million. The
21 secured claims as filed against the ERBO Property is 61
22 million.

23 So, both -- ERBO has no equity in its property.
24 KOVA has no equity, basically has a negative value, which
25 means the pledge of the interest of KOVA to SME has negative

1 value, which means there's no equity in the interest that
2 SME has in the property in KOVA. And so, the burden then
3 shifts. Since there's no -- we've showed that there's no
4 equity, the burden now shifts to the Debtor to show that
5 they have a plan that is confirmable and -- or reasonably
6 confirmable.

7 I mean, at this stage, they don't have to hit
8 every nail on the head of confirmation. But Your Honor
9 needs to look at -- at the plan that they proposed, and with
10 that -- and that plan as submitted -- and mind you, what
11 happened here, the Debtors -- it's a single asset -- the
12 ERBO Debtor is a single asset real estate case. It had 90
13 days to file a plan, and what it chose to do on the 89th day
14 is file a plan that -- and disclosure statement that have
15 really no information other than saying the Bodek family
16 will fund any future required payments.

17 It also said that -- it also says that at some
18 point in the future, two years down the road, the plan --
19 the property will be sold, and it has no projections. It
20 shows no funding commitment. It shows no property
21 valuation. They -- they've submitted nothing with the plan
22 and the disclosure statement.

23 And I think they -- and I think what they're
24 betting on here is that Your Honor is going to kick the can
25 down the road to a disclosure statement hearing, which is on

1 for June 28th, is going to try -- and hold us hostage. They
2 are going to try amending their disclosure statement and
3 then hopefully be able to put it out maintaining exclusivity
4 and putting it out to vote and keep dragging this case on
5 and on.

6 You heard testimony that -- from Mr. Silverberg
7 that the carry of G4 alone is 400,000. You've heard -- you
8 know that the real estate taxes are coming due July 1st. If
9 you look at the New York City submissions, I think that tax
10 bill is going to be in the range of 400,000 to 455,000. You
11 look at the schedule submitted by the Debtors at the outset
12 of this case, the bank account has no money. The monthly
13 reports show that there's no money in the bank account.

14 The irony of the schedules is that it shows a bank
15 account that was closed I think a year before the filing of
16 the bankruptcy case. The Debtor's plan is a negative
17 amortization plan. It -- it provides no payments to anyone
18 until the day comes that it sells the property, gives no
19 indication if the property gets sold a year, two years down
20 the road for more than what all the creditors are owed. It
21 kind of throws in the towel 30 months down the road or two
22 years down the road. It throws -- it throws the towel in,
23 and we're all just standing on the sidelines waiting, and I
24 don't think that's -- it's almost as if the Debtor is saying
25 to Your Honor maybe we don't file a plan and you just let us

1 hang around for two years and see what happens.

2 The -- I noticed up the depositions of the Bodeks,
3 and if you look at the notice of depositions and then really
4 the subpoenas that I served on the Bodeks, first the
5 subpoenas on the Bodeks, it wasn't asking for tax returns
6 but was asking for bank account information, asking for --
7 to find out do they have -- because it says the Bodek family
8 is going to fund it. Do they have the wherewithal to fund
9 this plan?

10 They produced no documents and they didn't show up
11 for the deposition to even ask those questions. They didn't
12 attach anything to their disclosure statement that would
13 give any indication that they would be able to fund this --
14 fund this plan.

15 I also asked for what efforts were made to obtain
16 exit financing, money that would have -- inevitably have to
17 come in behind G4 and the other -- maybe the other
18 lienholders to carry this property. That didn't happen.

19 What was -- also, we asked for financial
20 information relating to the Debtors going back in time,
21 which Mr. Markowitz actually had said to me offline was
22 irrelevant, but it is relevant, and it wasn't produced. And
23 that is Erno Bodek is supposed to be the managing member
24 post-confirmation under their plan, and we kind of need to
25 look under the hood as to where the money went when it came

1 in if it didn't all go to continue the construction. Where
2 did the money go over the last three, four years? And also
3 need to take Mr. Bodek's deposition to find out that. He
4 was a no-show. No information was provided. How do we have
5 faith in that on the buttress of certifications that Mr.
6 Bodek submitted saying he's unsophisticated, never ventured
7 down this path? So, this is the guy that we would be riding
8 for two years under their plan.

9 Also, the other reason looking under the hood is
10 Mr. Silverberg testified to he lent 4.75 million -- 4.55
11 million to the Debtors or to KOVA that got put into the
12 Debtors. Well, the first 2.75 million was to cure arrears
13 to G4 and under the loan documents finish up the project,
14 and then the next \$2 million was to do tenant fit-up, which
15 would have been nice for this building, because it would
16 have moved it in the direction of stabilization.

17 The 2 million, Mr. Bodek ended up asking for it to
18 be used to pay G4. I have no idea why it didn't get used to
19 finish the building. No -- no testimony. I couldn't ask
20 him any kind of questions in that regard.

21 With regard -- when I referenced the negative
22 amortization earlier, no, it's not per se impermissible as
23 Mr. Markowitz pointed out in his submissions, but it -- the
24 one plan that got confirmed with it ultimately that Mr.
25 Markowitz cited got reversed by the 5th Circuit. District

1 Court affirmed it. The 5th Circuit reversed it and sent it
2 back. It was not a fair and equitable treatment of the
3 secured creditor in that case and sent it back.

4 The other case that was cited by Mr. Markowitz,
5 Great Western, confirmation was denied. One of those two
6 cases cited by Mr. Markowitz said that with -- that it found
7 with the exception of one case there, every negative
8 amortization was denied. Confirmation of every negative
9 amortization plan was denied. In that one case, the lender
10 had a written agreement already agreeing to it.

11 And mind you, the cases that Mr. Markowitz pointed
12 out to you, all of them are 30-plus years old. I couldn't
13 locate a confirming negative amortization case in the recent
14 past, and that's what this plan is.

15 And you know, I -- the one case that we cited, and
16 albeit, it's from 1993, which was the 160 Bleecker Street
17 case, the judge in that case basically said that, Your
18 Honor, at this stage of the case, part of a stay relief
19 motion should be looking at the feasibility of the plan.
20 And it said -- and in that case that we -- there are quotes
21 that were thrown out here, "What is clear is that this plan
22 comes down to nothing more than a speculation on the future
23 values of New York residential real estate." That was a
24 residential real estate case. "A speculation which all the
25 risk will be borne by the secured creditor," cooperative in

1 that case, "to finance the Debtor's hope of recouping equity
2 if the market rises significantly in the years to come."

3 It also pointed out in that case the plan
4 fancifully provides that additional "limited funding" will
5 be provided by an unnamed "third party." There is no
6 evidence that convincingly supports the availability or
7 sufficiency of such funding.

8 You have that here. And what really creates pause
9 on the funding is what we stumbled across in the last
10 several days. And when you had the rejection motion and the
11 motion to retain the new construction person and they
12 submitted to Your Honor \$400,000 will be in the -- in Mr.
13 Markowitz's trust account, well, the \$400,000 went in the
14 day before the hearing, went in on May 3rd to Mr.
15 Markowitz's trust account. It went -- then we had the
16 hearing on May 4th. Mr. Markowitz made a quick statement
17 somewhere in there that he has the money, and then it went
18 out a couple of days after. It went back to the funding
19 source. And then as we approached the continued hearing on
20 May 22nd, the money came back in, and Mr. Klein, Herschel
21 Klein, the new VP of the Debtors who somehow has no equity
22 interest in the Debtors and has taken over control of it
23 said that we have the money. Well, the money went in
24 literally a day or so before the May 22nd hearing that we
25 had before Your Honor and then it went out again on May 26th

1 and then back in again on May 30th as we approached this
2 hearing.

3 So -- and there's no -- and as Mr. Klein testified
4 in that hearing, there's no written commitment of -- he
5 stated where the money came from, Flexocraft, but when you
6 look at the sheet, it's Laser Master International, so it
7 didn't come from Flexocraft unless they're the same entity.

8 And he -- he said there's no written commitment.
9 It was a loan to his father-in-law, Erno Bodek. But it's
10 got to create pause because they can put the money in, pull
11 it out at any time they see fit. So, they're asking --
12 they're asking this -- all the creditors who have a vested
13 interest in this property to stand on the sidelines and wait
14 and see, and wait and see for two years. I don't see how
15 that plan is feasible as of today.

16 And then you -- and when you hear -- heard the
17 testimony of Mr. Silverberg about his alternative proposal
18 of how he's drilled down, looked at the property, has money,
19 and has put money into this effort, he's prepared to go
20 forward with a plan. So, we think -- we think that we don't
21 need to go past today. I think stay relief should be
22 granted to my client so it can notice up the sale of the
23 pledged interest. And remember, I made the comment at the
24 outset, it's not necessarily 60 days. It's commercially
25 reasonable. And I also think exclusivity needs to be

1 terminated so that we can propose a plan immediately and
2 work in that direction and negotiate with each of the
3 creditors on a consensual plan, which is something I haven't
4 heard that the Debtors have done here.

5 So, for those reasons, we would request that we be
6 granted stay relief as well as the termination of
7 exclusivity.

8 THE COURT: Mr. Bauer, I just note that your
9 motion technically was moving to terminate exclusivity under
10 1125. And so, I'm not really sure, you know, how that's
11 something I can just decide to grant you.

12 You know, I realize you asked for it in your
13 motion, but you don't cite to -- you know, you don't move
14 under the appropriate section of the code. You don't cite
15 to case law on it. You don't cite to cases where that's
16 permissible or not. And I -- I don't see how I'm going to
17 grant that today.

18 I expect I'm going to get a motion to extend
19 exclusivity based on the dates, because we're talking about
20 like February to March, March to April, April to May, May to
21 June. So, in what -- today's the 6th? I guess -- I'm not
22 sure, but I would guess it's about another couple days, less
23 than a week, the exclusivity period is going to run unless
24 there's a motion to extend it, and I'm going to have to hear
25 that at that point.

1 And then I think the issue is there, you know,
2 will make sense or you'll, you know, if I grant this motion,
3 you might be in control of the Debtor by that point. Maybe
4 you won't even want that. So, I don't know, but I'm just
5 saying to you, I'm not going to grant relief that's not
6 properly articulated in the motion.

7 So, I guess I'll ask does anybody else want to be
8 heard with respect to support of the motion?

9 MR. SELBST: Your Honor, Stephen Selbst, Herrick
10 Feinstein. I'd like to speak briefly in support of the
11 motion.

12 THE COURT: That's fine, Mr. Selbst.

13 MR. SELBST: Thank you, Your Honor. Again, for
14 the record Stephen Selbst, Herrick Feinstein for G4 18190,
15 LLC.

16 Your Honor, I want to take a step back and talk
17 about the posture of this case. We're four months in.
18 We've got a plan filed, and I'm going to come back to the
19 plan, but Mr. Bauer has said the plan is not confirmable, a
20 view that my client shares.

21 We have a fight over the completion of the
22 building where the creditors unanimously opposed the choices
23 of the Debtors to complete the building. From our
24 perspective -- and my client has the biggest financial stake
25 in this case. It filed a proof of claim for \$56.8 million.

1 They obviously want the project to succeed. But from our
2 perspective, there is no meaningful progress in this case.

3 Yes, we've had a fair amount of Your Honor's time
4 and we're grateful and respectful of that time, but we don't
5 have a deal and we don't have a meaningful plan.

6 G4 believed in this project, Your Honor, and they
7 backed their claim -- they backed their belief with money
8 and they were patient in '21 and '22, even as this project
9 went further and further behind. They extended the loan,
10 they extended the maturity date, until finally the patience
11 is running out.

12 But we no longer -- G4 no longer has patience --
13 has confidence in the Debtor. It certainly does not have
14 confidence in Irving Oak and maybe to construct the project
15 based on the testimony that Your Honor heard at the last
16 hearing. G4's view is that they are inexperienced. They're
17 in over their heads, and they're not the right people to
18 complete this project.

19 By contrast, SME, the movant here, has said that
20 it will continue to work with Cauldwell Wingate and Higher
21 Ground, and one of the things that impressed me personally
22 about the prior testimony was the level of knowledge that
23 Mr. Cecora displayed on the stand.

24 Mr. Cecora will not have a learning speed curve to
25 get up to. He knows his building. He's lived it for years.

1 We don't believe the Debtor's plans for switching to
2 complete the building, even if they're motivated by an
3 understandable desire to save money, makes sense for this
4 project at this time.

5 And again, that's part of the reason why we
6 support this motion, but fundamentally, we believe that SME
7 has the money, has the vision, and has the patience to
8 support this.

9 Now, I want to talk about the plan for just a
10 couple of minutes. We do not believe this plan is
11 confirmable, Your Honor. This is a plan as Mr. Bauer
12 pointed out that has negative amortization. The Debtor's
13 proposed that the creditors stand on the sidelines for two
14 years or more with no payment. The proposed interest rate
15 is actually less than the current non-default rate that my
16 client is being paid. That hardly seems fair and equitable.

17 Mr. Bauer has already talked about the case law on
18 negative amortization plans. The cases also talk about
19 shifting the risk of the reorganization back onto the risks
20 of creditors.

21 You heard -- you heard very knowledgeable
22 testimony from Mr. Cirz today about the risks that are
23 present in this market right now. The market is weak. The
24 Chelsea sub-market is particularly weak. There's an 18-
25 percent vacancy rate in this property -- in this sub-market.

1 Based on Mr. Cirz's uncontested testimony, the Debtors have
2 no equity in this -- in this project.

3 As Mr. Bauer pointed out, the Debtors have no
4 committed source of funding. And as Mr. Cirz's appraisal
5 report showed, there's a fair amount of additional capital
6 that's going to be required to complete this project, and
7 there's certainly no evidence in the Debtor's plan that they
8 have anything like the amount of capital that they need. It
9 is disturbing to say the least to talk about the hide-and-
10 go-seek experience with the funding that Mr. Bauer just
11 described to this Court.

12 But fundamentally, and I think this is an
13 important question that I asked Mr. Cirz, if interest rates
14 continue to rise, the building is likely to decline in
15 value, not increase in value. And so, that exposes my
16 client to the risk of diminution in the -- in the
17 collateral. And of course, it's not even being offset by
18 adequate protection payments in the form of current
19 interest.

20 There's no question about it. This project is
21 going to take a while to finish. It's going to take a while
22 to lease up. That's what Mr. Cirz told us. But what the
23 Debtor's plan really wants is literally a free option at the
24 -- at the expense of the creditors. It's heads I win, tails
25 you lose.

1 Your Honor, respectfully, the Debtors do not
2 believe that this is -- I mean, excuse me, G4 does not
3 believe that that's a fair and equitable plan. We do not
4 believe that they've done anything in this case to justify
5 continuing their exclusivity or frankly staying in control
6 of this property.

7 This is exactly the kind of case that Congress was
8 thinking of when it imposed the SRA -- RE requirements back
9 in the mid-'90s, a Debtor who's using exclusivity to string
10 the lenders along when they have no equity in the property.

11 Your Honor, I think the evidence fully supports
12 granting the relief from stay that Mr. Bauer and SME have
13 requested and we fully support that position. Thank you.

14 THE COURT: Would anybody else like to be heard in
15 support of the motion?

16 MR. NASH: Your Honor, Your Honor. Just briefly,
17 Kevin Nash for Higher Ground, and I'm making my statements
18 on behalf of Higher Ground as a creditor. We have filed a
19 claim. I think we have a relatively substantial claim.

20 Now, listening to the testimony, you know, my
21 major view of this is that we're fortunate from a creditor
22 perspective that the mezzanine lender has the willingness
23 and financial wherewithal to stay with the project.

24 And you know, it's somewhat heartening to
25 creditors that the mezzanine lender realizes that he's last

1 in line on the corporate side, but they have a substantial
2 investment here and they don't want to forfeit that, and
3 that desire not to forfeit that investment, you know, will
4 rebound positively for the creditors in this case.

5 The only path forward, Judge, is to have a
6 solvent, viable entity take over the lead in the Chapter 11
7 case. We talked about feasibility and I think the evidence
8 is clear that feasibility isn't there on the Debtor's plan.
9 We can debate the concept of negative amortization, but I
10 think we can't forget the fact that if this plan ever went
11 out for vote, I don't think any credits are voting for this
12 plan. So, I don't think feasibility alone is the big issue.
13 I think acceptance of creditors is a larger issue. You
14 don't even get to feasibility unless you have -- have
15 certain votes and at least one class of creditors voting,
16 and I can't see on this plan any creditor voting for this
17 plan.

18 So, from our perspective as a creditor, I would
19 ask the Court, actually I would urge the Court, to grant the
20 motion of the mezzanine lender. Let the process really
21 begin in earnest of a viable entity taking control of the
22 Debtor, and that's the only way creditors will see any
23 recovery here.

24 I appreciate Mr. Selbst, but his client is the
25 first mortgagee, and the rest of us are -- are behind the

1 first mortgagee, and we're very vulnerable to any further
2 delay. We're very vulnerable to an extended transition
3 period, and if -- if this is going to have any success, it
4 can't be delayed any further. I think Mr. Bauer made a very
5 convincing case as to the grounds necessary to -- to lift
6 the stay from his perspective and certainly Higher Ground
7 joins in that.

8 THE COURT: Okay. Any other -- I guess anybody
9 else wish to be heard in support of the motion?

10 MS. ZOURIGUI: Yes, Your Honor. Jennifer Zourigui
11 on behalf of Cauldwell Wingate. I'm not going to be
12 repetitive. Like -- as Mr. Nash just said, speaking on
13 behalf of Cauldwell as a creditor, very serious concerns
14 about the proposed plan, that it's not realistic, won't be
15 approved, creditors won't get paid. We're also hopeful by
16 SME potentially taking over, getting us all the way there,
17 and we fully support their motion.

18 THE COURT: Okay. All right. Mr. Markowitz?

19 MR. MARKOWITZ: I guess I'm outnumbered.

20 THE COURT: You are again. Sorry.

21 MR. MARKOWITZ: Okay. Judge, Scott Markowitz,
22 Tarter Krinsky & Drogan, counsel for the Debtor and Debtor
23 in possession.

24 I think we have to look, first of all, at what the
25 motion is and what grounds they're seeking. The motion is

1 the motion to lift the stay under 362-D-1 and 362-D-2. This
2 is a motion filed by the mezzanine lender. The mezzanine
3 lender put in an appraisal that appraises the real estate at
4 \$48 million, and based upon the senior debt, the mezzanine
5 lender under 506 of the Bankruptcy Code is an unsecured
6 creditor.

7 They're -- the value -- they said it's negative.
8 (Indiscernible) they have an unsecured claim. It's
9 (indiscernible) bankruptcy law that unsecured creditors are
10 not entitled to adequate protection. I can cite you many
11 cases to that effect. I can cite you a simple one, In re:
12 Sunedison, 562 B.R. 243 by Judge Bernstein from this court
13 where he says, "Adequate protection must be provided to
14 protect the decline in value of a non-Debtor's interest in
15 the property resulting from imposition of the automatic
16 stay. Unsecured creditors do not have an interest in the
17 property of the estate that merits adequate protection, and
18 there is no expressed statutory requirement that unsecured
19 creditors receive adequate protection," citing other case,
20 Judge Bernstein, Sunedison, 562 B.R. 243.

21 If you accept their appraisal at \$48 million, and
22 we all know appraisals, obviously an appraisal is just the
23 best guesstimate of what the value of the property is,
24 obviously if you marketed the property -- and we all
25 acknowledge that the market is challenging right now.

1 So, they're not entitled to adequate protection.
2 Then they move under 362-D-2. Again, there's case law that
3 says 362-D-2 applies to a secured creditor. An unsecured
4 creditor doesn't make a motion under 362-D-2 to lift the
5 automatic stay. That's not what the ordinary motion is.
6 And plus, even if you give an unsecured credit like they are
7 based upon their evaluation standing to move to lift the
8 automatic state under 362-D-2, which is not the norm, then
9 they still have to (indiscernible) the property is not
10 necessary for effective reorganization. This property is
11 necessary for reorganization -- necessary for effective
12 realization, because it's the only property that the Debtor
13 has.

14 And now we get into the -- whether the plan is
15 confirmable. I don't -- I don't think at this stage we're
16 going to have a disclosure statement hearing on the 28th. I
17 -- with respect to the deposition, I asked if they could do
18 the deposition by Zoom. They said no. Mr. Bodek, a
19 holocaust survivor who was a young child when he left the
20 Holocaust, is in his mid-eighties, is not that healthy. His
21 son-in-law has stepped in to help him to take over, to help
22 him get this thing in the -- in the right direction, and he
23 will be prepared to testify at the June -- he will be
24 available for a deposition before the June 28th hearing on
25 the disclosure statement, that they can take -- take his

1 deposition, because he's the one that's going to be
2 arranging the funding to fund the plan and to carry the
3 property under the Debtor's plan. He's at this hearing
4 today.

5 And the plan is not patently unconfirmable. The
6 plan is very similar to their plan. You heard testimony
7 from Mr. Silverberg that their plan is to fix up the
8 property, didn't say -- didn't put up the money in escrow or
9 anything. Their plan is to fix up the property, sell the
10 property, and pay creditors. That's exactly what the
11 Debtor's plan is. It's the same plan.

12 And we can get into -- we can argue about the
13 negative amortization. We're going to probably try to
14 tighten that up a little bit. There's a real estate tax
15 payment due July 1st. I think that the -- the disclosure
16 statement hearing is June 28th. So, I think that if the
17 Debtor raises the money to pay the real estate taxes, then
18 that -- this is not a motion by the senior lender to lift
19 the automatic stay. They didn't make a motion, and you
20 heard testimony from Mr. Silverberg and you heard testimony
21 from the appraiser -- strike that, you heard testimony from
22 the appraiser the property is not declining in value. The
23 appraiser said the property is worth \$48 million today,
24 probably worth \$52 million in less than a year, and it'll be
25 worth 80-something million dollars in a few years when the

1 property is stabilized.

2 The plan, the mezzanine lender doesn't like the
3 plan. We cite this case, Trans West Resort from the 9th
4 Circuit. I don't know if Your Honor had a chance to look at
5 that case, but that case was a case where the 9th Circuit
6 affirmed confirmation of a plan where the mezzanine lender's
7 equity interest was totally wiped out and received nothing,
8 and the senior lender -- that's not -- and the senior lender
9 was crammed down. the senior lender had bought the mezz
10 loan in that case, so they were the same parties, and it
11 makes the argument on -- the argument that they've been --
12 the argument that the mezz lender is making here, that we
13 won't be able to confirm a plan because they're the only
14 creditor that gets to vote against the Mezz entity, and we
15 cite the case. The 9th Circuit is I think the only circuit
16 court that's ruled on the issue the per plan versus the per
17 Debtor issue. And the 9th Circuit ruled that the per -- per
18 plan issue, I think Judge (indiscernible) in another case in
19 this district had ruled on that, too. I believe it was a --
20 it wasn't a Tribune case, but it was another case --

21 THE COURT: (Indiscernible) Enron.

22 MR. MARKOWITZ: Yeah, yeah, (Indiscernible) Enron.
23 So, with respect to the plan, we recognize that the Debtor
24 is the underdog in this plan fight, and obviously we need to
25 get some creditor impaired class to vote for the plan. We

1 cite cases. They don't dispute those cases that secured tax
2 claims can be treated as impaired classes under the
3 Bankruptcy Code, even cited a case in our papers, a Judge
4 Duberstein case, where the city voted in favor of a plan.
5 It was a small hotel case cited in our -- in our papers.

6 There's no reason to believe that the city may not
7 vote for our plan. It's their pre-petition claim. They --
8 they say in their papers that it's unfair for the city to
9 vote for the plan. If the city does vote for the plan, then
10 you have an impaired class. The Debtor would have to pay
11 the post-petition and post-confirmation real estate taxes as
12 they come due. But we're talking about the pre-petition
13 real estate taxes, and that can be an impaired class.

14 And Mr. Nash says I don't think any creditors are
15 going to vote for the plan. I don't think that should be
16 enough to say that the plan can't be confirmed because Mr.
17 Nash says I don't think any creditors will vote for the
18 plan. There's -- there's mechanics lien creditors. There's
19 other unsecured creditors.

20 And so, while I recognize that the Debtor is the
21 underdog here, but the Debtor has filed the plan during the
22 exclusivity period. It gets another 60 days automatically
23 to solicit it. We may need to get an extension on that. We
24 have a hearing on the disclosure statement, June 28th.

25 So, based upon that, based upon the testimony you

1 heard today that the property is not declining in value, in
2 fact, it's an increase in value, we can't -- we can't
3 predict the interest rates, what the Fed's going to do. No
4 one can predict that.

5 So, we think, you know, from the Debtor's
6 perspective, the Debtor should be given the opportunity to
7 try to get its plan confirmed and continue to negotiate. We
8 had negotiations. I know they're not admissible before Your
9 Honor, but we met for hours on Friday with back and forth
10 proposals. We would make some substantial progress and then
11 they put a deadline on it. You must have an answer by
12 sundown on Friday or no deal. So, we go through that kind
13 of a -- of a negotiation tactic.

14 I don't believe that they've met their standard
15 because I believe under 506, by their own admission, if you
16 accept this appraisal, they're under -- they have a totally
17 unsecured claim, not under secured, they're totally
18 unsecured because the -- according to the proofs of claim,
19 there's a dispute as to how much the senior lenders owe, but
20 it's between 50 and 55 million. We agree with that, okay?
21 So, based upon the senior mortgage on the property,
22 forgetting the mechanics liens, forgetting anything else,
23 they're a wholly unsecured creditor. They're similar to
24 like, like those cases, like the Pond case in the Chapter 13
25 In re: Pond where you have a wholly unsecured mortgage. We

1 -- they're in a similar position kind of as if they had a
2 junior mortgage behind the senior lender and the junior --
3 and the senior mortgage is more than the value of the
4 property.

5 They're a wholly unsecure creditor, not entitled
6 to adequate protection under 362-D-1. They're not entitled
7 to relief under 362-D-2 either. They haven't demonstrated
8 that the property is not necessary for effective
9 reorganization. The Debtor's timely filed its plan. It's a
10 single asset real estate case.

11 Congress amended the laws for the single asset
12 real estate cases like Mr. Selbst said because there was
13 some perceived abuse of real estate cases. The Debtors
14 complied, filed their plan within the 90-day period,
15 promptly scheduled a hearing on the disclosure statement.

16 The Debtor has been maintaining the property. The
17 Debtor has been trying to move it forward, and I understand
18 Your Honor seems inclined to deny the motions that were
19 filed, but we can try to address those. I'll ask you to
20 hold off on that decision.

21 But based upon this record, based upon the law,
22 based upon the fact that, you know, citing the Trans West
23 Resort case, that this mezzanine lender is by their own
24 admission out of the money, I think Your Honor should deny
25 the lift stay motion at this point. And if they want to

1 make a motion under 1121 to terminate exclusivity or we
2 fight the exclusivity fight at some point as Your Honor
3 mentioned, then we can have the fight then.

4 But we have a hearing on June 28th on the
5 disclosure statement. We are going to make some changes to
6 it. We did get an appraisal. I just got our appraisal.
7 It's a little bit different than their appraisal, but we
8 didn't have it in time to put it into evidence and get ready
9 for this hearing today, but we will have it and amend our
10 disclosure statement to provide -- to lay out our appraisal.

11 I don't think we need to get into the battle of
12 appraisers here. That's a very unscientific thing. I think
13 that Your Honor should deny the motion. There's no
14 prejudice for them waiting a few more weeks. We'll give
15 them a deposition on feasibility from Herschel Klein before
16 the June 28th disclosure statement hearing if they want to
17 take feasibility discussions. But as Mr. Nash said, it's
18 not only feasibility at issue. Obviously, we have to
19 demonstrate that, but we need to get an impaired class and
20 the only way we're going to know whether we have it an
21 impaired class voting for the plan is to let the plan go out
22 and let creditors vote for it.

23 The disclosure statement we can amend to whatever.
24 I don't believe that they're right that there's not adequate
25 information. Their adequate information is based upon under

1 1125, you know, a flexible standard based upon the Debtor's
2 books and records, based on the situation. I think there's
3 adequate information here, and I would request that Your
4 Honor either deny the motion without prejudice based upon
5 that or carry the motion to the hearing on the disclosure
6 statement, which is only -- less than three weeks away.

7 THE COURT: Okay. Mr. Markowitz, I do have some
8 questions for you. I --

9 MR. MARKOWITZ: I figured you would.

10 THE COURT: My problem with this is not, you know,
11 some -- look, some of your arguments are right. There are
12 things that I have to decide as confirmation or on the
13 disclosure statement hearing and maybe aren't things that
14 definitively decide today or that I could definitively
15 decide today make your plan unconfirmable, patently
16 unconfirmable as the case law says, or inability to do it
17 within a reasonable period of time.

18 But what I do have a problem with, and Mr. Bauer
19 did raise this issue, but it's been the thing that I've been
20 having the hardest time grappling with myself and
21 considering this, is money. And why do I say money? Well,
22 Mr. Bauer pointed out that there's a payment that's due July
23 1st for taxes, and I don't have any evidence that there's
24 money for that. Okay. It's not July 1st. I get that.
25 That's a future problem. It's not my problem today, but

1 it's there.

2 Then I've got -- you have a plan that you're
3 proposing to send out for a vote that assumes that things
4 are going to happen and a sale isn't going to take place
5 until sometime remotely close to two years from now. Well,
6 how is that going to be paid for? I don't have any
7 information about that whatsoever. And those -- there's
8 real costs. I mean, there's not just the cost of the TCO.
9 There's definitely the cost we've heard of probably a
10 leasing agent, possibly some build-out, the fact that you
11 still have to have electricity, you have to have security,
12 you have to have insurance, you have to have all kinds of --
13 so those have to be paid, and that doesn't even go to the
14 fact that what Mr. Bauer's plan is trying to -- has
15 suggested is that in addition to the fact that they can pay
16 all those costs and say they have the money to do it, that
17 they will also be paying the senior lender during that time
18 period, and that's what they're proposing to do in their
19 plan, which is even more cash, like some type of payments.
20 I don't know what they are. There's no plan in front of me,
21 but I'm just saying.

22 So, I look at this appraisal and you're right.
23 Look, there are things about that appraisal that I have
24 questions about myself. And you're certainly right that
25 there can be differences in appraisals, especially here

1 where we're talking about not just what it looks like today
2 but maybe longer.

3 But the problem that I have is I -- based on the
4 evidence I have today, there's no way that somebody is going
5 to provide exit financing here that is anybody other than
6 the Bodeks or the existing lenders. It's just not going to
7 be possible. You can't prime them. The secure -- the
8 evidence today shows that's impossible. So, the idea that
9 there's going to be exit financing from some mysterious
10 third party is not going to happen.

11 MR. MARKOWITZ: No, we didn't say -- yeah, but --

12 THE COURT: Unless that person is going to lend on
13 an unsecured basis or an equity basis, and realistically in
14 this market with these interest rates and this climate of
15 the commercial real estate, what third party is ever going
16 to do that? It's not going to --

17 MR. MARKOWITZ: No, we -- no, we --

18 THE COURT: No, let me finish, please.

19 MR. MARKOWITZ: I'm sorry. I'm sorry. I didn't
20 mean to interrupt you.

21 THE COURT: Yeah. You have to let me finish.

22 MR. MARKOWITZ: I'm sorry.

23 THE COURT: So, the evidence I have before me
24 today from the appraiser is clear to me that there cannot be
25 exit financing from a third party. And I have heard that,

1 yes, Mr. Bauer's client is willing to provide financing to
2 carry this project under certain circumstances. For all I
3 know, depending on where -- how things went, maybe under
4 worst circumstances, Mr. Selbst (indiscernible) I have no
5 idea.

6 What I know is that they're not going to finance
7 your plan. They've been very clear about it. So, they
8 aren't going to be the source of your plan. Just clear
9 right now. They've said no, isn't happening, okay? And
10 can't finance around that.

11 So, that leaves your client. I don't -- I
12 understand why Mr. Bauer wanted to take their depositions,
13 because your plan says it's either going to be exit
14 financing from third parties or your client's family.
15 There's no evidence in this record for me today that your
16 clients have the money. In fact, there's probably evidence
17 about that \$400,000 that came from Mr. Klein that he said in
18 prior testimony, so I'm going by that, that he
19 (indiscernible), that that's not from your clients
20 themselves. It's from their son-in-law who is not the --
21 are not the shareholders. That doesn't mean your son-in-law
22 couldn't be the funding service. I acknowledge that.
23 That's possible but I have no commitments, no information
24 whatsoever about that.

25 So, when I'm sitting here today, I'm sorry to say

1 this, this looks like a fantasy to me, because I don't have
2 any evidence that this could happen in near term. And
3 you're right, I have a disclosure statement in 22 days. But
4 if you think I'm going to approve a disclosure statement
5 that doesn't have projections, that doesn't have a
6 liquidation analysis, that doesn't have a commitment for
7 financing, it's not going anywhere.

8 So, that's just the -- realistically under these
9 circumstances where I am. So, when I'm looking at the case
10 law and trying to figure out does it fit in -- you know, how
11 far do I go in this? Does it fit with the situation where
12 there's really a source of funding here, that people really
13 need to have the opportunity to explore this, I'm not seeing
14 it. And the fact that your clients didn't show up for
15 depositions, if anything, it allows me legally to draw a
16 negative inference. I'm not saying I'm doing that, but I'm
17 just telling you that's where my problem is.

18 So, you didn't show up here today with any
19 evidence of financing. And I -- this is where my problem
20 is. I honestly think there's certainly -- I doubt
21 personally that I would -- you know, I don't know what I
22 would do with a negative amortization plan. I acknowledge
23 Mr. Bauer that I've -- to Mr. Bauer and you, I've never had
24 one that I was involved in a case in practice, never seen
25 one before. It was interesting for me to read all those

1 pieces. I've read all of them. Very few have been
2 approved, but it's not impossible. I'll acknowledge you,
3 there's a test. It's not impossible.

4 But the problem is that I wouldn't even get to
5 confirmation because I'm not going to get through a
6 disclosure statement hearing without all the things that I
7 don't see as adequate information in that disclosure --

8 MR. MARKOWITZ: We have to -- we have to fix that
9 before the 28th.

10 THE COURT: Well, you -- you might get that
11 opportunity, but my point to you is not showing up for
12 depositions for Mr. Bauer, who's asking the same questions
13 that I'm going to be asking on the 28th and requiring
14 evidence of, it's not a really good thing.

15 MR. MARKOWITZ: Right. I did ask him if he could
16 do Zoom and he said no. So, that was an issue on that.

17 THE COURT: I understand. All right. Well,
18 anyway, that's my -- that's my issue, Mr. Markowitz.

19 MR. MARKOWITZ: I understand your issue, Your
20 Honor.

21 THE COURT: I keep grappling with here.

22 MR. MARKOWITZ: I understand your issue.

23 THE COURT: Okay. All right.

24 Mr. Bauer, do you have anything else? Are you
25 finished, Mr. Markowitz? Sorry, I don't -- I didn't

1 (indiscernible).

2 MR. MARKOWITZ: I am, Judge. I am.

3 THE COURT: Okay.

4 MR. BAUER: As I led off the -- today, as I led
5 off my speech a few minutes ago, clearly Mr. Markowitz's
6 agenda is to continually kick the can down the road. He's
7 saying -- you acknowledge, you saw it, Your Honor, the plan
8 has no meat to it whatsoever, no information. He filed it
9 as a placeholder, figuring that he'll go get to the 28th and
10 somewhere between now and the 28th maybe he'll provide some
11 additional information.

12 You hit the nail on the head with the exit
13 financing. As far as -- I mean, I still was hoping that the
14 exclusivity would be terminated, because I'd like to have
15 been in a position to file a plan. I think we did lay it
16 out --

17 THE COURT: File a motion and attached it. No
18 one's stopping you.

19 MR. BAUER: I think -- I think, Your Honor, we did
20 in our initial motion for stay relief, we alluded in a
21 footnote that we also request that the exclusivity period --

22 THE COURT: You did, but you did not move under
23 the proper standard, and it's not articulated in the motion.

24 MR. BAUER: I thought it was articulated in the
25 motion under 1121. And then Mr. Markowitz addressed it and

1 then we responded to it in our supplement going through the
2 --

3 THE COURT: Okay. Well, I'm not ruling based on
4 that because --

5 MR. BAUER: That's fine.

6 THE COURT: -- in my opinion, you haven't filed a
7 proper motion for that.

8 MR. BAUER: That's fine, Your Honor.

9 THE COURT: But let me ask you a couple of
10 questions that -- that I have about your situation.

11 MR. BAUER: Sure.

12 THE COURT: You mentioned at the beginning that
13 it's not 60 days, and I understand that. I think 60 days is
14 what you and I were probably both thinking of as an Article
15 9 sale, which is not exactly your situation. Then you do
16 need the 60 days.

17 What I'm grappling with, Mr. Bauer, is what you
18 had offered me at the first hearing, which is maybe let you
19 get yourself started on this, put the notice out, get to a
20 date, and have to come back to me before I let you actually
21 take over the shares of this -- you know, the membership
22 interest. And that's what I'm grappling with on my side,
23 because I think that if I'm going to let you go forward on
24 this, I'm not going to let you do it on 10 days or 15 days'
25 notice. That does not seem commercially reasonable for me

1 in the context of a bankruptcy case, especially because we
2 have a lot of other creditors, too, and you'll have to
3 decide if you're going to notice them. You certainly, I
4 think, are going to be required to notice all the credits
5 that are creditors of the entity that you are going to be
6 seeking to take your, you know, foreclosed membership
7 interest in.

8 So, I don't think that I would find 10 or 15 days
9 to be reasonable about that. So, what I've been grappling
10 with myself is whether what I should be doing is putting
11 this out for some period of time, like 30 days, 60 days, for
12 you to actually exercise your rights.

13 That gives Mr. Markowitz his disclosure statement
14 hearing, which I'm just telling you right now unless it's --
15 everything's perfect, it's not happening, but I've been
16 clear about my problems, and if we don't get through that,
17 then, you know, maybe that's when I'm going to let you
18 foreclose on your shares and you'll be the Debtor at that
19 point and you can do whatever you want with respect to the
20 plan.

21 MR. BAUER: It's your call, Your Honor.

22 THE COURT: I know. I'm just telling you.

23 MR. BAUER: I hear you loud and clear.

24 THE COURT: And another question (indiscernible)
25 ask for you, though, that's another thing I've been

1 grappling with, which is confirmation issue, and this is an
2 issue for you, I think, if I -- if you go there. Your own
3 disclosure statement, your own appraiser says that they
4 think that this could be worth X amount in the future.
5 That's not my problem for today. I readily admit that. My
6 problem for today is what it's worth today. It's not what
7 it's worth in the future.

8 But what I have been grappling with is, well, what
9 happens if -- if I grant your motion and then you end up
10 filing your own plan, and your plan is to do what your
11 client said? What does that mean for that fact that there
12 might be future value out there that goes beyond your claim
13 maybe when you add in all the additional money? I don't
14 know, not saying I know, but possibly. It goes beyond
15 everyone's claim. What happens with that?

16 In a regular -- in a different situation where
17 it's not a single asset real estate case, and I grant you,
18 we have three Debtors here, but one thing people often do is
19 some kind of provision for payment in that circumstance
20 going back to the equity, if they ever get to that point.
21 And sometimes that's hope certificate, we call them.
22 Sometimes it's a -- it's a -- you know, it's an out of the
23 money warrant. It's a payout later on.

24 But I think, you know, based on your own
25 appraiser's valuation for what this would be if it's

1 stabilized, you might have an issue with that. And so, it's
2 not an issue for today for me, but I'm just noting it for
3 the record, because it's been something that I -- when I
4 read your appraiser's analysis, I thought, well, that's
5 interesting because while today there's no value and there's
6 really no value if there's the TCO, you know, maybe in a
7 stabilized situation, which no one knows because no one
8 knows what you're going to get in sale for the property and
9 no one knows what the market's going to be and no one even
10 knows if that's the right estimate of the stabilized value,
11 but what happens then?

12 So, anyway, that's something I've been grappling
13 with and trying to figure out myself, how I deal with that.
14 Again, don't think it has anything to do with today's
15 problem, but just it's a problem down the road there
16 potentially.

17 MR. MARKOWITZ: I hear you loud and clear on it.
18 I'm not sure I agree with you, because if somebody were to
19 buy this property for \$49 million today through a --

20 THE COURT: Yeah, they'll get whatever they get.
21 They're going to have to pay money.

22 MR. MARKOWITZ: They get the building, they start
23 putting it in and stabilizing it, and they get all of the
24 upside. Same thing --

25 THE COURT: That's right.

1 MR. MARKOWITZ: Same thing if somebody bought it
2 at a confirmation hearing. It happens all the time in
3 business cases when somebody --

4 THE COURT: True.

5 MR. BAUER: -- comes in. They get all of the
6 upside that -- that's -- so, I mean, I -- a lot of times in
7 single asset real estate cases, the equity gets canceled.
8 You got new value that comes in. The new body that's
9 putting in all the money, they benefit and get the upside.

10 THE COURT: All right. Okay.

11 MR. MARKOWITZ: But I hear you loud and clear.

12 THE COURT: We should be discussing
13 (indiscernible) I'm just going to go ahead and issue my
14 ruling then.

15 Okay. So, 541 West 21 SME, LLC filed a motion
16 seeking relief from the automatic stay on April 18, 2023,
17 ECF 54. An initial hearing on the motion was held on May 4,
18 2023. On May 5, 2023, this Court entered an order
19 scheduling a final hearing on the motion for June 6, 2023,
20 and setting certain final deadlines for filing additional
21 pleadings, ECF 78.

22 On May 22, 2023, SME filed a declaration of Eran
23 Silverberg in support of the motion, ECF 90, and a
24 supplement to the motion, ECF 89, which includes a
25 declaration of Raymond T. Cirz, in support of the appraisal

1 prepared by Newmark Group, Inc., attached as Exhibit 1 to
2 Mr. Cirz's declaration and filed in support of the motion
3 and a declaration of Morris S. Bauer in support of the
4 motion.

5 On May 31, 2023, ERBO Properties, LLC, KOVA 521,
6 LLC, and Gold Mezz, LLC, collectively the Debtors, filed an
7 objection to the motion, ECF 93.

8 On June 2, 2023, SME filed a reply to the Debtor's
9 objection to the motion, ECF 96, which includes a
10 declaration of Morris S. Bauer in support of the reply.

11 On June 6, 2023, the Court held a final hearing on
12 the motion. Mr. Cirz and Mr. Silverberg testified at the
13 hearing. I also note that obviously there were 41 exhibits
14 admitted into evidence before me.

15 SME moved for relief from the automatic stay under
16 Section 362-D-1 and 362-D-2 of the Bankruptcy Code. The
17 Court notes that the motion does not expressly seek to
18 dismiss the cases, to convert the cases, to appoint a
19 Chapter 11 Trustee, and/or terminate exclusivity in its
20 perspective. Since SME did not expressly move for such
21 relief as the Court views it, the Court will not address
22 such possible relief.

23 Section 362-D-1 authorizes relief for cause,
24 including the lack of adequate protection of an interest in
25 property of -- sorry, of an interest in property of such

1 party in interest.

2 Section 362-D-2 authorizes relief if, A, the
3 Debtor does not have an equity in such property, and B, such
4 property is not necessary to an effective reorganization.

5 With respect to cause, SME argues that cause
6 exists because the Debtors were past due on the loan as of
7 the filing date and have failed to make payments under the
8 mezzanine loan documents post-filing. However, the
9 testimony by Mr. Cirz, SME's appraiser, and the appraisal
10 prepared by Newmark Group, Inc., and for this purpose I note
11 I'm citing to Exhibit 2, the updated appraisal, demonstrate
12 that Mr. -- that it is Mr. Cirz's opinion that the value of
13 the building real estate property is less -- in an amount
14 less than the amount that G4 asserts is owed to it in its
15 proof of claim.

16 When one also considers the amount owed for taxes
17 and mechanics liens which are secured by statutory liens,
18 the value of the building and real property as of the date
19 of the filing of the bankruptcy proceeding was likely less
20 than the value of all the secured claims that have priority
21 over SME's claim since the filing was on February 13, 2023,
22 which is a little less than four months ago.

23 This would effectively mean that the value of the
24 equity in ERBO, which owns the building real property, was
25 likely zero as the filing date and is zero today or

1 negative, depending on someone's perspective.

2 Accordingly, the equity held by KOVA 521, LLC and
3 ERBO, which was pledged to SME to secure its mezzanine loan
4 also does not have any positive equity value. Thus, SME
5 loans -- SME's loan, mezzanine loan, would not be entitled
6 to accrue post-petition interest under the Bankruptcy Code.
7 It appears that G4's loan was also likely under-secured as
8 of the filing date and thus no interest would accrue post-
9 petition on that loan either.

10 The Court notes that since the filing, the Debtors
11 have made efforts to move forward with finishing up the
12 construction for the premises by rejecting contracts and
13 hiring a replacement construction manager and a replacement
14 general contractor.

15 SME raises the issue of property taxes that are
16 due in July and how there is no money to pay those taxes.
17 If they are not paid, SME's position would be behind
18 additional unpaid taxes and that would be a lack of adequate
19 protection, but those taxes are not yet due and payable.

20 The 2nd Circuit applies the Sonnax factors when
21 determining whether there is cause. In re: Sonnax
22 Industries, Inc., 907 F.2d 1280, Page 1285 (2d Cir. 1990).
23 The Sonnax factors appear to -- that appear to be relevant
24 to the Court are 1, 10, and 12.

25 One, whether relief would result in a partial or

1 complete resolution of the issues. If the relief is
2 granted, it would transfer ownership and control over the
3 membership interest of KOVA 541 which in turn owes -- sorry,
4 owns the membership interest in ERBO. This would partially
5 resolve the dispute between KOVA 41 -- 541 and SME.

6 With respect to test 10 -- prong 10 of the test,
7 the interest of judicial economy and the expeditious and
8 economical resolution of litigation, a UCC process to act on
9 the pledge of membership interest in KOVA 541 would
10 partially resolve the dispute between SME and the Debtors
11 and would be expeditious. However, it would not resolve the
12 other creditors' claims against the Debtors.

13 And 12, the impact of the stay on the parties and
14 the balance of the harms. The lifting of the automatic stay
15 and the consummation of the UCC proceeding would effectively
16 wipe out the shareholders' control over the Debtors if the
17 pledge was intended to -- the motion was granted and the
18 party was intended -- was allowed to proceed to actually
19 exercise its rights under the pledge.

20 SME -- the Court finds that as of today, SME has
21 not demonstrated a lack of adequate protection for itself or
22 cause under the Sonnax factors. With respect to Section
23 362-D-2, SME has demonstrated that the Debtors do not have
24 any equity in the building or real property based upon the
25 Newmark appraisal. Again, I'm citing to Exhibit 2, and the

1 testimony of Mr. Cirz.

2 The appraisal and the testimony Mr. Cirz
3 demonstrate that, in his opinion, the property is worth 49
4 million today and would be worth 52.6 million if the
5 temporary certificate of occupancy were to be obtained in a
6 year. In either case, the Debtors do not have any equity in
7 the building or property, nor does the equity of Gold Mezz
8 or KOVA have any value today or near term.

9 However, the Court notes that based upon the case
10 law, there's nothing about the case law that provides that
11 at that point that turns Mr. Bauer's client into an
12 unsecured claim. It turns Mr. Bauer's client into a secured
13 creditor whose collateral may not be worth anything beyond
14 control of the Debtors or if the pledge is actually acted
15 upon, and that the actual value of those mezzanine shares
16 might be nothing other than the right to control the Debtor.
17 But it does not strip Mr. Bauer's client of a lien and does
18 not turn it into an unsecured creditor. It turns it into an
19 unsecured creditor whose collateral is valued at zero, but
20 it doesn't strip its rights as a secured creditor.

21 Therefore, the Court finds that Mr. Bauer's client
22 has the right to bring this motion under 362-D-2, and that
23 Mr. Bauer's client has demonstrated under 362-D-2 that there
24 is in fact no equity that the Debtor has.

25 In United Savings Association of Texas v. Timbers

1 of Inwood Forest Associates, Limited, 584 U.S. 365 at Pages
2 375 and 376, the -- in 1988, the Supreme Court held that
3 once a movant establishes that a Debtor has no equity in the
4 property, it is the burden of the Debtor to establish that
5 the collateral at issue is necessary to an effective
6 reorganization.

7 Accordingly, the burden shifts to the Debtors to
8 demonstrate that the collateral issue is necessary to an
9 effective reorganization. In (indiscernible) the Supreme
10 Court held that the standard is whether the property is
11 essential for an effective reorganization that is in
12 prospect, this means that a reasonable probability of a
13 successful reorganization within a reasonable time.

14 The Debtors need not show that a plan is
15 confirmable but that the proposed plan had a realistic
16 chance of being confirmed and is not patently unconfirmable.
17 See In re: West White Plains Development Corp., 140 B.R. 948
18 at Page 950, Bankruptcy case, Southern District of New York,
19 1982.

20 SME argues that the plan filed by the Debtors does
21 not have a realistic chance of being confirmed and/or is
22 patently unconfirmable. SME raises various issues about the
23 plan including negative amortization of the secured claims
24 not being fair and equitable, a free and -- a free and clear
25 sale cannot be achieved over the objection of the secured

1 creditors, substantive consolidation is inappropriate, there
2 is no plausible source of finance -- funding available, the
3 continued management would not be in the interest of
4 creditors or other equity holders, that there is no
5 unimpaired class of creditors who will vote to confirm the
6 plan, and that the proposed treatment of the pledged
7 interest violates the absolute priority rule.

8 While this Court has not approved a negative
9 amortization plan, a handful of courts outside the 2nd
10 Circuit have approved negative amortization plans as cited
11 to in the Debtor's objection.

12 The 10-part test articulated in In re: Apple Tree
13 Partners, LP, 131 B.R. 380, 390 (Bkrtcy.W.D.Tenn. 1991)
14 would be the test that would have to be applied to the facts
15 surrounding the proposed plan.

16 While this Court is highly skeptical as to whether
17 the Debtors could satisfy the 10-part test, prior to
18 confirmation, this Court cannot definitively determine
19 whether the proposed plan violates the fair and equitable
20 test due to the plan's premise of negative amortization.

21 With respect to the sale free and clear, the sale
22 proposed in the plan is under Section 1123-A-5-D and not
23 under Section 363. Section 1123-A-5-D provides for the sale
24 of all or any part of the -- of the property of the estate,
25 either subject to or free of any lien or the distribution of

1 all or any part of the property of the estate among those
2 having an interest in such property of the estate.

3 If the plan is confirmable over the objection of
4 the secured lenders under Section 1129-B, then a sale free
5 and clear of liens is possible. That would have to be
6 determined at confirmation or possibly the disclosure
7 statement herein.

8 Substantive consolidation is proposed as part of
9 the plan, and thus, whether it is appropriate or not would
10 be considered at confirmation or possibly at the disclosure
11 statement hearing. The Court notes that the Debtor also
12 argued that the plan can be confirmed without substantive
13 consolidation.

14 The Court is going to come back to the argument
15 that there is no plausible source of funding available. SME
16 argues that continued management would not be in the
17 interests of creditors or other equity holders.

18 While the owners may lack the experience to
19 oversee the construction of the office building, the Court
20 does not think that this is relevant as to whether the plan
21 is reasonably confirmable in a reasonable time period. The
22 Court may have to consider whether this means that the plan
23 is not feasible, but the Court does not believe that this
24 makes the plan patently unconfirmed.

25 SME argues that there is no -- likely no impaired

1 class of creditors who will vote to confirm the plan. That
2 is not certain and cannot be determined unless and until the
3 plan is set out for a vote. The Court accepts the plan --
4 the fact that clearly G4, SME, Cauldwell Wingate, and Higher
5 Ground will not vote in favor of the plan.

6 SME argues that the plan's proposed treatment of
7 the pledged interest violates the absolute priority rule.
8 The Court notes that the Debtor argues that the treatment of
9 the pledged interest is confirmable under the indubitable
10 equivalent provision of the -- of Section 1129. While the
11 Court is skeptical about that, this issue would have to be
12 determined at confirmation or perhaps the disclosure
13 statement hearing.

14 The issue that the Court is struggling -- has
15 struggled with is the lack of any plausible source of
16 funding. From the testimony given in connection with the
17 motion to enter into certain contracts, Mr. Bodek personally
18 borrowed funds from his son-in-law in order to have the
19 \$400,000 to fund any additional work at the property to try
20 to obtain a temporary certificate of occupancy.

21 In the reply, SME notes that the money has been
22 deposited and withdrawn from the Debtor's counsel's escrow
23 account multiple times during the last month. That funding
24 does not cover the cost of insurance, electricity, real
25 estate taxes, security, or any of the other costs of

1 maintaining the property, nor do those funds cover those
2 costs for two years after confirmation.

3 The \$400,000 in the escrow account does not cover
4 the cost of a leasing agent or the cost of any build-out
5 required by the tenants. The disclosure statement does not
6 contain any projections of income or expenses for the two
7 years prior to the sale. There is not any evidence in the
8 disclosure statement or otherwise of the ability of the
9 shareholders, the Bodeks, to pay for the cost of the
10 ownership of this property during the up to year -- two
11 years after confirmation of the plan, nor is there any
12 evidence in the disclosure statement or otherwise of the
13 likelihood of the Debtor obtaining sufficient exit financing
14 in the near term to pay for these costs.

15 The Court notes that the Bodeks decided not to
16 make themselves available for a deposition by SME regarding
17 their financial wherewithal to fund these costs. The
18 testimony of Mr. Cirz and the appraisal submitted as Exhibit
19 2 demonstrates that it's extremely unlikely, virtually
20 impossible, that the Debtors would be able to find priming
21 exit financing without the consent of the secured parties.

22 Neither G4 nor SME have agreed to finance the
23 Debtor's plan. Any exit financing would have to be junior
24 to all the secured creditors liens or be in the form of
25 unsecured financing or equity contributions. There is no

1 evidence that such exit financing would be obtainable from a
2 third party or the shareholders or the related party to the
3 shareholders.

4 The Court notes that this situation reminds it of
5 this quote. "The Court should not be left to speculate
6 about the important elements and key issues relating to the
7 likelihood of an effective reorganization." The Debtor's
8 hopes and aspirations for reorganization, although well
9 intended, have not been supplemented by any showing that
10 reorganization is possible, let alone reasonably likely
11 within a reasonable period of time. See *In re: Diplomat*
12 *Electronics Corp.*, 82 B.R. 688, 693 (Bankr.S.D.N.Y. 1988).

13 The Court finds that in the absence of evidence of
14 financial wherewithal by the Bodeks and the absence of
15 evidence of the possibility of obtaining exit financing from
16 a third party, when coupled with the appraisal that claims
17 that exist based on all the filed claims and the claims
18 docket, testimony of Mr. Cirz, that that is sufficient for
19 this Court to find that it is not reasonably likely that the
20 Court -- that a plan can be confirmed by the Debtors within
21 a reasonable period of time.

22 Accordingly, the Court grants the motion under
23 Section 362-D-2 and will modify the automatic stay to allow
24 SME to proceed with taking all necessary respects -- steps
25 with respect to effectuating the transfer of the pledged

1 membership interest to SME prior to the actual transfer
2 occurring.

3 The Court notes that it will require SME to
4 provide 30 days' notice to parties. However, the Court
5 additionally will require SME to come back to the Court for
6 a final or further authorization prior to the actual
7 transfer of the pledged membership interest. This will
8 allow the Debtors to proceed with the disclosure statement
9 hearing on June 28th, even though significant
10 supplementation of the disclosure statement appears to be
11 needed for the Court to determine that it provides adequate
12 information.

13 If the Court finds that it does not provide
14 adequate information at that hearing, I think the parties
15 all understand that the Court is going to allow the transfer
16 of the -- of the shares to proceed at that point.

17 MR. MARKOWITZ: Your Honor, I just have one
18 question. Thank you for your time and decision. I just
19 have one question.

20 THE COURT: Sure.

21 MR. MARKOWITZ: If -- are you -- are you done with
22 the decision? I didn't want to interrupt you.

23 THE COURT: I'm done.

24 MR. MARKOWITZ: Okay. Are you staying -- is -- I
25 don't know if it was a request to stay. Is it -- is it 4001

1 -- what's the rule, 4001 -- Section -- stay Rule 4001-A-3?
2 Is that stayed for the 14 days before they can start sending
3 out the 30-day notice or are you waiving that?

4 THE COURT: No. No, I'm waiving it.

5 MR. MARKOWITZ: Okay.

6 THE COURT: They can proceed with sending out
7 their notice, their 30-day notice, and that -- and that
8 will, you know, set the hearing for that time. They're
9 going to have to come back to me before I actually let the
10 actual transfer occur, but they can start the clock running.

11 MR. MARKOWITZ: Okay. I just wanted to be clear
12 on that. Thank you.

13 THE COURT: And you know, when we're here on the
14 28th, on your disclosure statement, you know, you obviously
15 understand that I have serious issues, and I know that the
16 legal issues that I highlighted in my -- in my -- in my
17 analysis, that were raised by Mr. Bauer in his papers, don't
18 mean -- many of them are things that could be issues about
19 why I couldn't approve the disclosure statement.

20 I just don't have the disclosure statement hearing
21 in front of me today. So, some of the legal issues that
22 were raised, you know, there is always the issue about do
23 you send out a disclosure statement that's legally
24 unconfirmable?

25 And I will tell you, Mr. Markowitz, which will not

1 make you feel any better, I'm one of those people as you
2 know that doesn't do that. If I think that there's a legal
3 problem, I raise it at the disclosure statement hearing
4 myself. I don't send things out. I don't waste
5 solicitation. I don't think it's useful.

6 MR. MARKOWITZ: I understand.

7 THE COURT: And so -

8 MR. MARKOWITZ: We have work to do.

9 THE COURT: -- there are quite a number of legal
10 issues that I highlighted that were raised that I am not
11 ruling on today, but they were all -- many of them are
12 issues that could be a problem for me approving a disclosure
13 statement as well. So, I think that in addition to all of
14 the issues I've raised about the lack of adequate
15 information in that disclosure statement, I think you're
16 going to have to be prepared to address, and my assumption
17 is that they'll be raised in people's objections to the
18 disclosure statement, that -- that these -- that there are
19 these legal issues about your plan and that might make it
20 legally -- patently, you know, legally unconfirmable.

21 And so, I may have to, for example, at a
22 disclosure statement hearing have to determine at that
23 point, you know, based on the evidence that's in the
24 disclosure statement as it appears in front of me at that
25 point whether or not, for example, you know, it -- this plan

1 should be sent out because of the negative amortization
2 aspect.

3 And the fact Mr. Selbst pointed out something that
4 I already noted myself about the interest rates, that
5 they're not even the same interest rates that are in
6 people's contract. So, there's issues about that.

7 I think Mr. Bauer has raised legitimate issues
8 about the proposed treatment you have for his client's class
9 of claims on a legal basis. You know, is that indubitable
10 equivalency? Is this something that could be a free and
11 clear sale, you know, under the circumstances?

12 You know, those are all --

13 MR. MARKOWITZ: I understand.

14 THE COURT: -- legal issues. The substantive
15 consolidation issue, I mean, there's no evidence in your
16 disclosure statement as to why substantive consolidation is
17 appropriate, and it's your motion in essence for it. It
18 lacks that.

19 I mean, these are all things that are going to
20 probably be brought before me at a disclosure statement
21 hearing and they're are all things that I would have to
22 consider before, in addition to my issues about whether this
23 provides for adequate information, for someone to make an
24 informed decision on the plan.

25 So, I just note that, that those are all there.

1 And that's not -- and again, you know, they're -- these are
2 not insignificant legal issues. They're just not legal
3 issues that I could determine today without getting into
4 having a mini disclosure statement hearing or a mini
5 confirmation hearing, and that doesn't seem appropriate to
6 me, but there are real issues and they are all real issues
7 that could be a problem for a disclosure statement being
8 sent out. So, I just note those for the record, that
9 there's another -- there were other problems, but --

10 MR. MARKOWITZ: And I just have one more question.
11 I'm sorry to -- to keep asking questions.

12 THE COURT: No, it's all right.

13 MR. MARKOWITZ: Okay. You mentioned earlier about
14 the noticing of the UCC sale. Because this is in a Chapter
15 11 now, I thought you mentioned that they should be sending
16 notice out to all the creditors of the UCC sale, right?
17 Because they didn't do that before --

18 THE COURT: All the creditors of their entity.

19 MR. MARKOWITZ: Okay. Not ERBO?

20 THE COURT: No. ERBO has nothing to do with this,
21 unfortunately. This is an issue where the stock of an
22 entity is going to change hands. So, KOVA, the parties who
23 are going to be affected by this potentially are creditors
24 who are now going to have someone else potentially owning --
25 owning KOVA.

1 MR. MARKOWITZ: Got it.

2 THE COURT: And so, to me that requires -- I don't
3 think commercially reasonable notice in the context of a
4 Chapter 11 situation where you're -- you're taking -- you're
5 exercising your rights under UCC -- your UCC and a pledge
6 agreement to step into the shoes of the Debtor and take over
7 the shares of the -- of the stock and particularly control
8 of them, et cetera, that that does require parties who are -
9 - who are going to be affected by that, and the parties who
10 would be affected by that for sure are KOVA creditors.
11 Whether that indirectly impacts creditors of ERBO, yes, but
12 I don't think it directly impacts them.

13 You know, we don't -- you don't have to have a
14 substantively consolidated plan here. You know, one of the
15 other issues I had decided here that I wasn't even going to
16 address, but that had occurred to me here is, you know, this
17 is a -- you know, I don't -- you're moving for substantive
18 consolidation in your -- in your arrangements.

19 Mr. Bauer's situation when he proposes a plan, I
20 mean, they might propose something completely different. I
21 don't know what the plan will look like if that ever
22 happens. So -- if they take over, so I'm not assuming that
23 it impacts other parties, but it does -- I do think that
24 creditors who would otherwise be above in terms of the
25 priority field (indiscernible) priority rule of -- of the

1 equity, I guess I'll just put it that way, the membership
2 interest that Mr. Bauer's client would be foreclosing on, do
3 deserve notice so that they are aware of it. So, I am
4 requiring that he serve notice on the KOVA creditors. It's
5 not a huge list of people.

6 MR. MARKOWITZ: No. The whole list is not huge
7 anyway. I just was wondering even if they --

8 THE COURT: Yeah, no. That's what I'm requiring,
9 that he serve that on the KOVA creditors. He obviously has
10 to serve it on the Debtors, parties to his agreements. It's
11 in the agreements themselves, pledge agreements, but --

12 MR. MARKOWITZ: And advertise it --

13 THE COURT: And advertise it. That's up to him.
14 Whatever's in the agreement he's going to have to comply
15 with. But I'm -- I'm -- you know, I -- I don't see how --
16 you know, there's no requirement -- he's -- he is right that
17 there's no requirement for 60 days' notice --

18 MR. MARKOWITZ: No, it's commercially reasonable.
19 I get that. It's a (indiscernible) sale.

20 THE COURT: Commercially reasonable, and I also
21 note that a lot of times in loan agreements when this is a
22 different situation and it's personal property or something
23 else, there is a requirement for periods of time, but I
24 looked at the agreements and I agree that it's commercially
25 reasonable. So, I -- it's a question of what's commercially

1 reasonable, and I'm effectively determining that

2 commercially reasonable --

3 MR. MARKOWITZ: The 30 days, I got it.

4 THE COURT: -- is 30 days. So --

5 MR. MARKOWITZ: I understand. I have no other
6 questions.

7 MR. BAUER: Go ahead -- are you done your
8 questions?

9 MR. MARKOWITZ: No, I think I'm done with my
10 questions.

11 THE COURT: All right.

12 MR. BAUER: Your Honor, it's 30 days from when we
13 send the notice out. I -- so, are you going to so order the
14 record, prepare the order, or how --

15 THE COURT: No, you need to submit an order to me
16 in support of this, and I'm not saying it's 30 -- it's 30
17 days. You have to provide 30 days' notice. That's correct.
18 You can obviously get your notice out tomorrow if you can
19 get me an order.

20 MR. BAUER: Mm-hmm. Got it.

21 THE COURT: So --

22 MR. BAUER: Judge Beckerman's quick on orders.

23 THE COURT: It's probably because I used to do
24 your job.

25 MR. BAUER: We appreciate that seriously. No, all

1 kidding aside, we really do.

2 THE COURT: I try. It's one of my rules.

3 MR. BAUER: I know you do.

4 THE COURT: I try very hard to make sure that I
5 issue prompt orders and that also I try to rule on anything
6 that I don't really have to write an opinion on, even though
7 obviously I have to write an opinion -- a lot of it before
8 hearings, but those things.

9 MR. BAUER: Right.

10 THE COURT: That's part of it. Okay.

11 Mr. Markowitz, your other two motions, what do you
12 want me to do with them?

13 MR. MARKOWITZ: I want you to hold off until the
14 disclosure statement hearing.

15 THE COURT: Okay. You want to adjourn them to
16 that date?

17 MR. MARKOWITZ: I want to adjourn them to the
18 28th.

19 THE COURT: That's fine. I'm going to allow you
20 to adjourn them to the 28th.

21 MR. BAUER: Your Honor, since it's a -- an order
22 that modifies the stay relief, allows me to proceed but come
23 back to the Court before I actually take the possession.

24 THE COURT: The last step.

25 MR. BAUER: The last step. I don't want to have

1 to file another motion. Do I just put it --

2 THE COURT: No, that's right. I think we just --

3 MR. BAUER: -- the hearing date -- (indiscernible)

4 for you to put a hearing date in the -- for --

5 THE COURT: Yeah, that's fine. Have you -- I

6 think -- I don't think you need to put a date in. I think

7 we could schedule it. Well, let's see. Let's just talk

8 about it now.

9 Assume you send me an order and you get your

10 notice out tomorrow. Is that hypothetically true --

11 possible, Mr. Bauer?

12 MR. BAUER: I hope.

13 THE COURT: Okay, you're hoping. Okay. So, the

14 7th, then that would be 30 days. So, that would take you --

15 it's June, so that would take you to July 7th, which I think

16 is -- sorry, a weekend, Friday, sorry.

17 MR. SELBST: Friday, Your Honor.

18 THE COURT: Friday. Okay. So, do you -- I -- I

19 think that would probably mean that I'd have to -- sorry,

20 I'm just going in my calendar here. I'd have to have your

21 hearing on the 10th. I don't normally do Mondays, but if

22 you want to put it for the 10th, that's fine. I will. I'm

23 going to be here physically in New York. I'm not going

24 anywhere, so.

25 MR. BAUER: That's fine. What time on the 10th?

1 THE COURT: 10:00. How about that?

2 MR. BAUER: That's fine.

3 THE COURT: Let's do that.

4 MR. MARKOWITZ: That will be the further hearing
5 to --

6 THE COURT: July 10th.

7 MR. MARKOWITZ: That'll be the further hearing to
8 authorize the last step in the -- in the UCC sale process.

9 THE COURT: Correct.

10 MR. MARKOWITZ: Okay.

11 THE COURT: Yeah. Yeah. And I mean, I think you
12 all (indiscernible) miraculously we get through the
13 disclosure statement hearing --

14 MR. MARKOWITZ: Exactly, if we --

15 THE COURT: -- and I approve it on the 28th, I
16 think you know I'm not going to grant your -- probably not
17 going to grant your motion, Mr. Bauer, Because I'll have to
18 jump through like 85 hoops.

19 MR. BAUER: I hear you.

20 THE COURT: But we'll see.

21 MR. BAUER: We'll see. I like that. We'll see.

22 THE COURT: We'll see. I -- you never know. I
23 mean, you know, I just -- I feel you have to give people
24 some reasonable amount of notice, Mr. Bauer. So, that's my
25 situation.

1 MR. BAUER: I'm fine -- fine with that, Your
2 Honor.

3 THE COURT: All right. Is there anything else
4 that we need to discuss today?

5 All right. If not, I wish you all a good day,
6 rest of the day, and court is now adjourned and I will see
7 you all on June 28th.

8 MR. SELBST: Thank you, Your Honor.

9 MR. MARKOWITZ: Thank you, Your Honor.

10 THE COURT: Okay.

11 MS. ZOURIGUI: Thank you, Your Honor.

12 THE COURT: Okay. Mr. Bauer --

13 MR. BAUER: Thank you, Your Honor.

14 THE COURT: -- I'll just keep an eye out for your
15 document.

16 MR. BAUER: Yes, thank you.

17 MR. MARKOWITZ: And send me a copy of it, just so
18 I can take a quick look at it before you submit it.

19 MR. BAUER: I will.

20 MR. MARKOWITZ: Okay.

21 THE COURT: Thank you.

22 MR. BAUER: All right. Thank you.

23 (Whereupon these proceedings were concluded.)
24
25

I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: June 12, 2023

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